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C.M.A.No.809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE N.MALA

C.M.A.No.809 of 2023

P.Sivasakthi

..Appellant

Vs.

1.Vishwa Real Promoters Private Limited,
No.66, Chempullipuram,
Edaikazhinadu, Cheyyur,
Kanchipuram District – 603 304.

2.HDFC ERGO General Insurance Company Ltd.,
Branch Office, New No.528, Old No.559,
2nd Floor, Anna Salai, Teynampet,
Chennai – 600 018.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 30.11.2021 made in MCOP.No.41 of 2018 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Dharmapuri.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.S.Arunkumar for R2

R1 - Exparte



C.M.A.No.809 of 2023

WEB COPY

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree of the Principal Subordinate Judge, Motor Accident Claims Tribunal, Dharmapuri dated 30.11.2021 made in MCOP.No.41 of 2018.

2. The claimant has filed the appeal for enhancement of compensation for the injuries sustained by him in the motor accident which occurred on 11.06.2017. The claimant suffered fracture of the right leg and abrasion over the right and left hand and left leg. According to the claimant, he was earning a sum of Rs.20,000/- per month by doing agriculture and milk business. Due to the injuries sustained by him in the accident, he was not able to continue his work as before. The claimant therefore filed the claim petition seeking compensation of rs.10,00,000/-.

3. The 1st and 2nd respondents contested the claim petition and the 2nd respondent filed a counter denying all the averments made in the claim petition including negligence, liability and quantum of compensation.



C.M.A.No.809 of 2023

4. Before the Claims Tribunal the claimant examined himself as PW1 and marked Exs.P1 to P9 in support of his case. The respondents neither examined any witnesses nor filed any documents.

5. The claims Tribunal on an assessment of evidence on record gave a finding of negligence against the 1st respondent's driver and awarded a sum of Rs.63,000/- as compensation and mulcted the liability on the Insurance Company on the basis of the Insurance Policy marked as Ex.P3. Not satisfied with the amount awarded by the Claims Tribunal, the claimant has filed the above appeal.

6. The only point to be decided in the appeal is the quantum of compensation to be awarded to the claimant.

7. The learned counsel for the appellant submitted that the accident took place in the year 2017 and therefore the Tribunal erred in awarding a sum of Rs.3,000/- per percentage of disability. This Hon'ble Court in the judgment reported in *M.Chinnathambi Vs. S.Deepa & anr.* Reported in **2020 (1) TNMAC 617** held that Rs.5,000/- for percentage of



C.M.A.No.809 of 2023

disability can be awarded while adopting the unit method for accidents that occurred after 2015.

8. The learned counsel further submitted that the income assessed by the Tribunal is very much on the lower side. The learned counsel further submitted that the compensation awarded for transport charges and pain and sufferings also needed to be enhanced considering the nature of disabilities and the period of hospitalization.

9. The learned counsel for the respondent on the other hand submitted that the award of the Claims Tribunal is fair, just and reasonable and does not call for interference.

10. I have heard both the counsel and perused the materials produced before me. I agree with the submissions of the learned counsel for the appellant that the amount of Rs.5,000/- should be fixed per percentage of disability as held in the case of ***M.Chinnathambi Vs. S.Deepa & anr.*** Reported in ***2020 (1) TNMAC 617***. It is seen that the claimant had sustained fracture of the right leg. He was hospitalized for



C.M.A.No.809 of 2023

two periods between 11.06.2017 to 27.06.2017 under Ex.P6 and from 14.08.2017 to 28.08.2017 under Ex.P7. Considering the nature of the disabilities and the period of treatment undergone by the claimant, I am of the view that the amount towards pain and sufferings and transport charges can be enhanced.

11. On the income of the injured it is seen that the claimant was 35 years of age and he was doing agriculture and milk business. The accident took place on 11.06.2017 and therefore considering the cost escalation, I am of the view that the income of the deceased can be taken at Rs.9,000/- per month.

12. In view of the above discussion, the award of the Tribunal is modified as follows:-

Loss of Earnings:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount Awarded in the appeal</i>
1.	During the period of treatment (monthly income 3xRs.9,000/-)	Rs.18,000/-	Rs.27,000/-
2.	Loss of future earning on account of Permanent Disability (10%xRs.5,000/-)	Rs.30,000/-	Rs.50,000/-



C.M.A.No.809 of 2023

Medical Expenses:

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded in the appeal
1.	Expenses relating to Hospitalization treatment and Medicines	Nil	Nil
2.	Future Medical expenses	Nil	Nil
3.	Pain and Sufferings	Rs.3,000/-	Rs.10,000/-
4.	Extra Nourishment	Rs.5,000/-	Rs.5,000/-
5.	Loss of amenities	Nil	Nil
6.	Loss of expectation of life	Nil	Nil
7.	Transport Charges	Rs.2,000/-	Rs.10,000/-
8.	Attender Charges	Rs.5,000/-	Rs.5,000/-
Total		Rs.63,000/-	Rs.1,07,000/-

13. The claimant shall be entitled to Rs.1,07,000/- along with 7.5% interest. It is submitted by the learned counsel for the claimant that the award amount along with interest was already deposited by the respondent/ Insurance Company. Therefore, a direction is issued to the respondent/ Insurance Company to deposit the balance enhanced amount along with 7.5% interest within a period of six (6) weeks from the date of receipt of a copy of the order. The claimant shall be at liberty to withdraw the said amount by making proper application before the Tribunal.

14. The Civil Miscellaneous Appeal is **partly allowed**. No



C.M.A.No.809 of 2023

19.04.2023

dsa
Index :Yes/No
Internet :Yes/No
Neutral Citation :Yes/No
Speaking order/Non-Speaking order

To:-

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.



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C.M.A.No.809 of 2023

N.MALA, J.

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C.M.A.No.809 of 2023

19.04.2023