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C.M.A.No.3817 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3817 of 2019

Kanniappan

... Appellant/Petitioner

Vs.

1.Muralidharan

2.The Oriental Insurance Co. Ltd.,
No.115, Prakasam Salai,
Broadway,
Chennai – 109.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgement dated 15.03.2019 made in M.C.O.P.No.6305 of 2016 on the file of the Motor Accident Claims Tribunal (III Small Causes Court) Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Notice dispensed with vide
order dated 12.06.2023 [R1]
Mr.M.Krishnamoorthy [R2]



C.M.A.No.3817 of 2019

WEB COPY

JUDGMENT

The above appeal is filed by the petitioner/claimant seeking an enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai in M.C.O.P.No.6305 of 2016.

2. It is the case of the appellant that, on 14.09.2016 at 07.00 a.m., when the appellant was sleeping in front of his house, a car bearing Reg.No.TN 11 K 4128 came from Kodambakkam Kamarajar Salai belonging to the first respondent and insured with the second respondent/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the appellant, thereby, he sustained grievous injuries. Therefore, the appellant had filed a claim petition claiming a sum of Rs.10,00,000/- for the injuries sustained by him in the said road accident.

3. Before the Tribunal, the appellant had examined himself as P.W.1 and examined the doctor as P.W.2 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the side of the respondents, they have examined



C.M.A.No.3817 of 2019

two witnesses viz., R.W.1 and R.W.2 and marked 7 documents viz., Ex.R.1 to Ex.R.7. After adjudication, the Tribunal awarded a sum of Rs.89,400/- as compensation to the appellant by ordering pay and recovery. Not satisfied with the same, the appellant has preferred the present appeal seeking enhancement.

4. The learned counsel appearing for the appellant submitted that, though the individual doctor has assessed the disability at 45%, however, the Tribunal had fixed the disability only at 10% and awarded a sum of Rs.30,000/- towards the injuries, which is not sustainable and the same requires to be re-considered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. The learned counsel appearing for the second respondent/Insurance Company submitted that, the appellant was treated as inpatient in the hospital only for three days. Though the doctor had assessed disability at 45% without any material, however, the Tribunal below, taking into consideration all the relevant documents, has rightly fixed the disability at 10% and awarded a sum of Rs.30,000/- towards



C.M.A.No.3817 of 2019

disability, which is wholly sustainable and the same does not require any enhancement. Further, he submits that the other heads awarded by the Tribunal below is just and reasonable for the injuries sustained by the claimant. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. Though the appellant had sustained multiple injuries, however, he was treated as inpatient in the hospital only for three days, for which, the doctor has assessed the disability at 45% without any materials. In order to prove the disability, the appellant has not produced any documents before the Tribunal, thereby, the Tribunal has assessed the disability at 10% and awarded a sum of Rs.30,000/- towards disability. However, at the relevant point of time, the Tribunal ought to



C.M.A.No.3817 of 2019

WEB COPY

have fixed a sum of Rs.5,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.5,000/- per percentage of disability. Therefore, the amount under the head disability stands enhanced to a sum of Rs.50,000/- (10 x Rs.5,000/- = Rs.50,000/-).

8. Further, the Tribunal had awarded a sum of Rs.10,000/- towards pain and suffering; Rs.5,000/- towards extra nourishment; Rs.5,000/- towards transport to hospital; Rs.500/- towards damages to clothes; Rs.600/- towards attender charges; Rs.21,759/- towards medical expenses; Rs.5,000/- towards future medical expenses; Rs.6,500/- towards loss of income and Rs.5,000/- towards loss of amenities. This Court finds that the compensation awarded under the above heads are just and reasonable and does not require any interference.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-



C.M.A.No.3817 of 2019

S.No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Disability	30,000/-	50,000/- (enhanced)
2	Pain and Sufferings	10,000/-	10,000/-
3	Extra nourishment	5,000/-	5,000/-
4	Transport to Hospital	5,000/-	5,000/-
5	Damages to clothes	500/-	500/-
6	Attender charges	600/-	600/-
7	Medical expenses	21,759/-	21,759/-
8	Future Medical Expenses	5,000/-	5,000/-
9	Loss of income	6,500/-	6,500/-
10	Loss of amenities	5,000/-	5,000/-
	Total	89,359/-	1,09,359/-
	Rounded off to	89,400/-	1,09,400/-

10. Since there is a violation of the policy conditions as the policy had expired, the Tribunal had directed pay and recovery. Accordingly, this appeal is partly allowed and the compensation amount is enhanced from Rs.89,400/- to Rs.1,09,400/- and the second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.6305 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount,



C.M.A.No.3817 of 2019

if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount and thereafter, the second respondent/Insurance Company is at liberty to recover the said amount from the first respondent in the manner known to law. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

03.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
sp

To

- 1.The Motor Accident Claims Tribunal (III Small Causes Court), Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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C.M.A.No.3817 of 2019

M.DHANDAPANI, J.

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C.M.A.No.3817 of 2019

03.10.2023