



C.M.A.No.3590 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3590 of 2014

Raghupathy

.. Appellant

Vs.

1.Yuvaraj

2.Royal Sundaram General Insurance Co. Ltd.,

Sorrento Buildings, 1st Floor

No.6, L.B Road

Adyar, Chennai-600 020.

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 01.08.2014 made in MACTOP No.2317 of 2010 on the file of the Motor Accident Claims Tribunal/ Special Sub Court No.II to deal with MCOP Cases, Chennai.

For Appellant

: Mr.V.Velu

For Mr.F.Terry Chellaraja

For Respondents

: Mr.E.Rajadurai

For Mr.M.B.Gopalan Associates for R2



C.M.A.No.3590 of 2014

J U D G M E N T

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The Award dated 01.08.2014 passed in MCOP No.2317 of 2010 on the file of the Motor Accident Claims Tribunal /Special Sub Court No.II, to deal with MCOP Cases, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.3,00,000/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability of 35% at Rs.3000/- per percentage	1,05,000/-
Pain and suffering	50,000/-
Loss of Income for 4 months rounded off to	30,000/-
Transportation charges	20,000/-
Extra Nourishment	20,000/-



C.M.A.No.3590 of 2014

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Cost of Attender	15,000/-
Loss of Future prospects and amenities	50,000/-
Medical Expenses rounded off to	10,000/-
Total	3,00,000/-

3. Before the Tribunal, the claimant in MCOP No.2316 of 2010 was examined as PW1; the claimant in MCOP No.2317 of 2010, who is the appellant herein was examined as PW2 and the doctor, who treated them was examined as PW3. The claimant in MCOP No.2316 of 2010 has filed 6 documents which were marked as Ex.P1 to Ex.P6 and the appellant/claimant in MCOP No.2317 of 2010 filed 15 documents which were marked as Ex.P7 to Ex.P21. On the side of the 2nd respondent/Insurance Company, neither any witness was examined nor any document was marked.

4. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident



C.M.A.No.3590 of 2014

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Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. At the time of accident, the injured was aged about 22 years and working as Data Entry Operator and earned about Rs.15,000/- per month. But, without considering the occupation and income, the Tribunal has fixed the monthly income of the injured as Rs.6500/- per month without any contra evidence. The injured sustained injuries like closed fracture of shaft of right femur, closed fracture of interior pole of patella, closed fracture of right olecranon and multiple injuries all over the body. He had taken treatment at Ramachandra Hospital, Chennai from 10.05.2010 to 20.05.2010 and again on 31.03.2013 to 04.02.2013 at the same hospital. He had undergone surgery on 01.02.2013. He had taken inpatient treatment nearly 16 days and then also taken treatment as outpatient. In such circumstances, the Tribunal ought to have award compensation under the heads of permanent disability and loss of earning capacity as 100% and ought not to have reduced the disability.



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5. He further contended that the Tribunal has failed to consider the PW3 doctor's evidence who assesses the disability as 80%. PW3/doctor deposed that he had mal-united fracture of right femur, 1-1/2 shortening of right femur Hip flexion 80 degree; mal-united fracture of right patella, fibrosis right knee 80 degree flexion; difficulty to do squat and walk limping Malunited fracture right olecranon TBW removed flexion 80 degree elbow, difficulty to do work and carrying weights with right hand; but the Tribunal reduced the disability from 85% to 35%. Further, the compensation awarded by the Tribunal under the heads namely extra nourishment, pain and suffering and medical expenses is not adequate. The Tribunal has also failed to award any compensation under the heads viz., damages, attender charges, future medical expenses and loss of amenities. Hence, he prays to enhance the award.

6. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the appellant/claimant has not let in any material evidence to prove that he was earning a sum of Rs.15,000/- as monthly



income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,500/- as monthly income, which is not meagre and also the compensation awarded under the head of loss of earning is adequate. The Tribunal has rightly awarded a reasonable compensation and therefore, he prays for dismissal of the appeal.

7. The accident occurred on 09.05.2010 at about 16.45 hours at Thiruporur to Chennai Road, near Thiruporur Arch. The E-6 Thiruporur police station, registered a case in Crime No.253 of 2010 in connection with the accident. The appellant/claimant sustained grievous injuries viz., i) fracture in right femur, ii) fracture in right knee, iii) fracture in the right shoulder and multiple grievous injuries all over his body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

8. The doctor/PW3 assessed the disability at 80%. However, the Tribunal has reduced the same to 35%. In the considered view of this Court,



C.M.A.No.3590 of 2014

after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the Appellant/claimant at 60%. As far as the quantum of compensation is concerned, the Tribunal has rightly fixed a sum of Rs.3,000/- for one percentage of disability since the accident occurred in the year 2010.

9. The Tribunal has awarded a sum of Rs.30,000/- (6500 x 4 months) towards loss of income during the treatment period which is low. The grievous injuries caused disability and due to which, the claimant was incapacitated to perform his work in a routine and normal manner. In view of the fact that the claimant was working as Data Entry Operator, this Court is of the considered view that at least for a period of six months, the appellant/claimant would have been unable to do his work in a routine and normal manner. Hence, in the considered view of this Court, it would be appropriate to award a sum of Rs.39,000/- (6500 x 6 months) towards loss of income during the treatment period. The compensation awarded by the Tribunal under the heads namely, Transportation charges, Extra



C.M.A.No.3590 of 2014

nourishment and Attender charges is very low. In the considered view of this

Court, it would be appropriate to enhance a sum of Rs.25,000/- instead of Rs.20,000/- towards transportation charges, Rs.25,000/- instead of Rs.20,000/- towards extra nourishment and Rs.25,000/- instead of Rs.15,000/- towards attender charges.

10. Insofar as the other heads of the compensation viz., pain and suffering, amenities and medical bills are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

11. For the foregoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	1,05,000/- 3000 x 35	1,80,000/- 3000 x 60
Pain and Suffering	50,000/-	50,000/-



C.M.A.No.3590 of 2014

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income during the treatment period	30,000/- (6500 x 4)	39,000/- (6500 x 6)
Transportation charges	20,000/-	25,000/-
Extra Nourishment	20,000/-	25,000/-
Attender charges	15,000/-	25,000/-
Amenities	50,000/-	50,000/-
Medical Bills	10,000/-	10,000/-
Total	3,00,000/-	4,04,000/-

Accordingly, the appellant is entitled to a compensation of Rs.4,04,000/- (Rupees four lakhs and four thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.3,00,000/- to Rs.4,04,000/-. No costs.



C.M.A.No.3590 of 2014

(ii) The second respondent/insurance company is directed to deposit

the revised compensation of Rs.4,04,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellant/claimant is permitted to withdraw their portion of the award amount by filing an appropriate application and the payments are to be made through RTGS.

26.04.2023

Index : Yes/No

Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.II to deal with MCOP Cases, Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

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C.M.A.No.3590 of 2014

A.A.NAKKIRAN, J.
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C.M.A.No.3590 of 2014

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26.04.2023