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C.M.A.No.1778 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1778 of 2023

Srinivasan

... Appellant

Vs.

1.Sahul Amethu

2.Divisional Manager,

M/s.New India Assurance Insurance Co.Ltd.,

Divisional Office - 1,

Jerome Building, 2nd Floor,

Fort Station Road,

Trichy - 620 002.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2023 in MCOP.No.39 of 2022 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Ariyalur.

For Appellant : Mr.Amar D.Pandiyan
for Mr.M.Karuppaiah

For Respondents : Mr.Salomi for R2
No appearance for R1

J U D G M E N T



The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.39 of 2022, dated 24.03.2023, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Ariyalur.

2. The appellant is the claimant in MCOP.No.39 of 2022 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Ariyalur. They filed the claim petition claiming a sum of Rs.12,00,000/- as compensation for the grievous injuries sustained by the appellant in the accident that took place on 04.03.2022.

3. According to the appellant, on 04.03.2022 at about 10.30 a.m. while the appellant was proceeding in Ariyalur-Keezhapazhunoor road towards North-South direction in a two wheeler bearing Registration No.TN-61-S-4255, on the extreme left side of the road and was nearing Maruthayatru Bridge, the first respondent/the rider came in the opposite direction in his two wheeler bearing Registration No.TN-61-L-2490 drove the same in a rash and negligent manner without observing the Traffic Rules and dashed against the two wheeler of the appellant. Due to the said impact, the appellant sustained



grievous injuries. Therefore, the appellant filed the claim petition claiming a sum of Rs.12,00,000/- as compensation.

4. The first respondent, the rider of the offensive vehicle, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent riding of the first respondent. They stated that the appellant was the tortfeasor who invited the accident; and further submitted that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked twenty documents as Exs.P1 to P20. On the side of the second respondent/ Insurance Company one witness was examined as R.W.1 and two documents were marked as Ex.R1 and R2. The certificate issued by the medical Board were marked as Exs.C-1 to C3.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of the first



respondent and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.2,89,000/- as compensation to the appellant. Aggrieved over the said award, the appellant has preferred the instant appeal.

8. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is very meagre. The Tribunal ought to have awarded compensation by adopting multiplier method, since the appellant suffered functional disability as could be seen from the nature of the injuries and the avocation. The Medical Board assessed the disability at 38%. The appellant suffered fracture at Tibia Bone. Further, the learned counsel submitted that the award of compensation under other heads are also meagre and prayed for enhancement of the compensation awarded by the Tribunal.

9. Though notice was served on the first respondent, none had entered appearance on his behalf before this Court.

10. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the appellant had neither established his avocation nor proved his income. The appellant had also not established functional disability and hence, the award of compensation by the Tribunal by adopting



percentage method is just and reasonable. The award of the Tribunal, therefore, does not call for any interference and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

12. The only question involved in this case is whether the compensation awarded by the Tribunal is just and reasonable.

13. The appellant examined himself as P.W.1. He had stated that he was working as a driver. The appellant was aged about 33 years at the time of the accident. Considering the nature of injuries viz., the fracture and the avocation of the appellant, this Court is of the view that he would have suffered functional disability and thereby, affecting his ability to earn. In the facts and circumstances of the case, considering the discharge summary and the disability certificate issued by the Medical Board, this Court is of the view that the functional disability can be assessed as 25%. The appellant had not established his income, therefore, the Tribunal has fixed Rs.9,000/- as notional



income. Considering the evidence, avocation of the appellant, the year of accident, this Court is of the view that it would be just and reasonable fix Rs.10,000/- as notional income. Thus the award under the head “Disability” has to be Rs.10,000/- x 12 x 16 x 25 x 10 = Rs.4,80,000. The compensation awarded by the Tribunal under the head “Transport expenses”, “Loss of income” and “Extra Nourishment” are confirmed.

14. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Disability	1,90,000	4,80,000	Enhanced
2.	Transport expenses	5,000	5,000	Confirmed
3.	Pain and suffering	25,000	25,000	confirmed
4.	Extra nourishment	15,000	15,000	confirmed
5.	Loss of income	54,000	--	--
	Total	Rs.2,89,000/-	Rs.5,25,000/-	Enhanced by Rs.2,36,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and

the compensation awarded by the Tribunal at Rs.2,89,000/- is hereby enhanced



to Rs.5,25,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn.

No costs.

23.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

To

1.The Chief Judicial Magistrate Court,
Motor Accident Claims Tribunal,
Ariyalur.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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