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CMA.No.3906 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.3906 of 2019

Chinnusamy

Appellant

Vs

1. P.Durai

2. The Oriental Insurance Company Limited
Namakkal

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 26.02.2014, made in MCOP.No.189 of 2012, by the Chief Judicial Magistrate (MACT) Namakkal.

For Appellant : Mr.S.Ravichandran

For Respondents : Mr.J.Chandran-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, 26.02.2014, made in MCOP.No.189 of 2012, by the Chief Judicial Magistrate (MACT) Namakkal, for enhancement of compensation.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.5,00,000/- on various heads, for the injuries, fractures and disabilities, sustained by him, in a motor road accident, which took place on 17.10.2011 at about 16.30 hours. The 1st Respondent herein/owner cum driver of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company,



CMA.No.3906 of 2019

by filing a counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P10 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the 1st Respondent herein/owner cum driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.1,18,727/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, with costs, to be payable the 2nd Respondent/ Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Continuing Permanent Disability (20% x 1500)	30000.00
2	Medical Expenses	44727.00
3	Pain and Suffering	15000.00
4	Attendants Charges	5000.00
5	Extra Nourishment	10000.00
6	Transportation Expenses	5000.00
7	Loss of Income during the period of treatment	9000.00
Total Compensation		118727.00

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. The Appellant herein is the claimant. The 1st Respondent herein, who is the owner cum driver of the offending vehicle remained exparte. The 2nd Respondent is the Insurance Company.
6. As regards the negligence aspect, the Tribunal, considering the evidence on record, has held that there was negligent on the part of the 1st Respondent herein/driver cum owner of the offending vehicle and that the accident had



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occurred only due to the rash and negligent driving of the 1st Respondent/driver cum owner of the offending vehicle. Since the finding, recorded by the Tribunal, with regard to the actionable negligence, has not been assailed by anyone of the Respondents herein, the said finding of the Tribunal with regard to the negligence aspect, fixing the same on the part of the 1st Respondent/driver cum owner of the offending vehicle, is confirmed. As such, it is not necessary to narrate the entire facts in detail in respect of the accident. However, the dispute is only with regard to the quantum of compensation.

7. According to the learned counsel for the Appellant, the claimant suffered grievous injuries all over the body, including bone fracture at ankle and below knee on his left leg and when, as per Ex.P10 disability certificate and other medical records, the claimant suffered 28% disability, the Tribunal, erred in fixing the same as 20% and also compensation per percentage awarded by the Tribunal at Rs.1500/- is on the lower side. Further, the compensation awarded under the heads of pain and suffering, attendant charges, nutrition and loss income, needs to be enhanced, considering the nature of injuries and the disability suffered by the claimant and no compensation was awarded under the head of loss of amenities.
8. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
9. Based on Ex.P4 wound certificate and Ex.P10 disability certificate, the Tribunal came to the conclusion that the claimant suffered two grievous



CMA.No.3906 of 2019

WEB COPY

injuries on his left leg, due to which he suffered 28% permanent disability.

However, the Tribunal, fixed the same at 20% and Rs.1500/- per percentage, which are not just and proper. Hence, it would be appropriate to fix the permanent disability at 28% and Rs.3000/- per percentage, considering the medical evidence. Thus, the compensation under the head of continuing permanent disability would come to Rs.84,000/-, taking Rs.3,000/- per percentage ($\text{Rs.3000} \times 28\% = \text{Rs.84,000/-}$).

10.Considering the nature of injuries and the fractures suffered by the claimant and also the period of treatment, the compensation of Rs.15,000/- towards pain sufferings, Rs.5000/- towards attendant charges and Rs.10,000/- towards extra nourishment awarded by the Tribunal are enhanced to Rs.20,000/-, Rs.10,000/- and Rs.15,000/- respectively. Further, a sum of Rs.10,000/- towards loss of amenities is awarded. The compensation awarded under head of medical expenses is confirmed.

11.According to the claimant, he was aged about 62 years at the time of the accident and he was earning a sum of Rs.10,000/- as a Bus Driver belonging to a College and also as an agriculturist. However, in the absence of evidence, the Tribunal fixed his month income at Rs.4,500/- and awarded Rs.9,000/- towards the loss of income during the period of treatment for two months and it is not just and proper. It needs to be enhanced, since considering the nature of injuries, he could not have done his avocation as he was doing prior to the accident at least for a period of four months. Hence, a sum of Rs.18,000/- ($\text{Rs.4,500/-} \times 4$) can be awarded under the



CMA.No.3906 of 2019

head of loss of income during the period of treatment for four months. In all, the claimant is entitled to a sum of Rs.2,06,727/- as total compensation with interest 7.5% p.a. from the date of the petition till the date of realisation.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.2,06,727/- (Rupees two lakhs six thousand seven hundred and twenty seven only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Continuing Permanent Disability	84000.00
2	Medical Expenses	44727.00
3	Pain and Suffering	20000.00
4	Attendants Charges	10000.00
5	Extra Nourishment	15000.00
6	Transportation Expenses	5000.00
7	Loss of Income During The Period Of Treatment	18000.00
8	Loss of Amenities	10000.00
Total Compensation		206727.00

The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire compensation amount with interest, by filing proper application. No costs.

28.03.2023

A.A.NAKKIRAN, J.



CMA.No.3906 of 2019

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Chief Judicial Magistrate (MACT) Namakkal
2. The Record Keeper, VR Section, High Court, Madras

CMA.No.3906 of 2019

28.03.2023