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C.M.A. No. 2262 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2262 of 2021

Kuppusamy

... Appellant / Petitioner

Vs.

1. Murugan

2. The Divisional Manager,
United India Insurance Company Ltd.,
AR Plaza, Plot No.35,36 & 37,
45 Feet Road Extension,
Balaji Nagar,
Saram, Pondicherry - 1.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 10.03.2020 made in M.A.C.T.O.P. No. 105 of 2018 on the file of the Sub Judge, Motor Accident Claims Tribunal, Gingee.

For Appellant : Mr. P. Balamurali

For R1 : No Appearance

For R2 : M/s. Sree Vidhya



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant seeking for enhancement of compensation awarded in M.A.C.T.O.P. No. 105 of 2018, dated 10.03.2020 on the file of the Sub Judge, Motor Accident Claims Tribunal, Gingee.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 19.12.2017, at about 4:45PM, the claimant was riding a TVS XL motor cycle bearing Registration No.TN-25-AM-3321 from Kunthalampattu to Avalurpettai, while he reached near Mottai Vinayagar Temple, Avalurpettai, a lorry bearing Registration No.TN-04-E-4685, driven by its driver in a rash and negligent manner, hit on the claimant's motor cycle and caused grievous injuries. A criminal case was registered in Cr.No.576/2017 U/s.279, 337 of IPC on the file of Avalurpet Police Station. For the injuries sustained, the claimant has filed this appeal seeking compensation for a sum of Rs.10,00,000/- under section 166(1) of the Motor Vehicles Act.



4. The first and second respondents, who are the owner and the insurer of the lorry bearing Registration No.TN-04-E-4685 has not contested the claim and remained ex-parte.

5. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the first respondent's driver is responsible for the accident. In point no.2, the Tribunal fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimant. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.2,00,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.

7. The learned counsel appearing for the claimant submitted that the Tribunal has not properly considered the nature of injuries sustained by the claimant during the accident and adopted percentage method for



granting compensation under the head disability. The Tribunal ought to have awarded a substantial amount as compensation to the claimant for his disability sustained and further submitted that the Tribunal has not awarded compensation under loss of income during the treatment period and loss of amenities and also the compensation awarded under other heads are also on the lower side, hence prays to modify the award of the Tribunal.

8. Per contra, the learned counsel appearing for the respondents have submitted that the Tribunal based on the evidence placed on record has rightly fixed the compensation under the head disability, since there was no loss of income due to the injuries sustained by the claimant and also the compensation awarded under other heads by the Tribunal are just, hence prays to confirm the same.

9. I have considered the submissions made on both sides and perused the materials placed on record.

10. In Ex.P.3 - Accident register, the Assistant Surgen, Government Tiruvannamalai Medical College Hospital has recorded that the



claimant has sustained both bone fracture on the right leg and B.R. Bleeding, which are grievous injuries. The Medical Board Report issued by the Government Villupuram Medical College and Hospital, shows that the claimant has sustained fracture on the right leg, injury in the right ankle and on the right inner eye, fixed the disability of the claimant as 55% . Accordingly, the Tribunal has held that the disability sustained by the claimant is not classified as non functional disability and adopted percentage method for awarding compensation. On perusal of the same, this Court is of the view that the injuries sustained by the claimant has not reduced his earning capacity and the Tribunal has considered the case as per the guidelines issued by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***.

11. This Court in ***M. Chinnathambi vs. S. Deepa and another [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]***, awards Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016, hence, considering the date of accident, this Court is inclined to modify the award of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/-, hence the total compensation granted under the disability is



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modified to Rs.2,75,000/- (Rs.5,000/- x 55% of disability).

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12. The Tribunal has awarded compensation of Rs.20,000/- towards pain and suffering, Rs.5,000/- under attender charges and Rs.10,000/- under extra nourishment. Considering the age, period of treatment and nature of injuries sustained by the claimant, this Court finds that the compensation awarded under the above heads by the Tribunal are on the lower side, hence this Court is inclined to modify the above heads as follows: Rs.30,000/- towards pain and suffering, Rs.10,000/- towards attender charges and Rs.20,000/- under the head extra nourishment. However, the Tribunal has not awarded compensation under the head loss of amenities and loss of income during the treatment period, hence this Court is inclined to award Rs.10,000/- under the head loss of amenities and considering the age, nature of injuries sustained, in-patient treatment and earlier avocation of 'vegetable vendor' as claimed by the claimant, this Court is of the view that the claimant would have lost his income for the period of two months, hence this Court is inclined to fix income of the claimant as Rs.14,000/- per month and accordingly, grant Rs.28,000/- (Rs.14,000/- X 2) as compensation for the loss of income during the treatment period.



13. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability	1,65,000/-	2,75,000/-	Enhanced
2.	Pain and Suffering	20,000/-	30,000/-	Enhanced
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Attender charges	5,000/-	10,000/-	Enhanced
6.	Loss of amenities	---	10,000/-	Granted
7.	Loss of income during the treatment period	---	28,000/-	Granted
	Total Compensation	2,00,000/-	3,73,000/-	Enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to **Rs.3,73,000/- [Rupees Three Lakh and Seventy Three Thousands only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent - Insurance Company is directed to deposit the amount awarded 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 to the credit of M.A.C.T.O.P. No. 105 of 2018 on the



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file of the Sub Judge, Motor Accidents Claims Tribunal, Gingee. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Sub Judge,
Motor Accident Claims Tribunal,
Gingee.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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