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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

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

C.M.A.No.989 of 2021

Praveen

.. Appellant

Vs.

1. Mohanasundaram
2. Venkatachalam
3. The Divisional Manager
National Insurance Company Ltd.,
Office at Perundurai Road,
Near Collector Office,
Erode.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance and set aside the award dated 13.10.2020 in MACTOP. No.796 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.Ma.Pa.Thangavel

For Respondent : Mr.K.Padmanabhan R3

RR1 & 2 - NDW

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to enhance the award dated 13.10.2020 in MACTOP. No.796 of 2018 on the file of the Motor



Accident Claims Tribunal, Special Sub Court, Erode.

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2.The appellant is the claimant, first respondent is the driver of the van and the second respondent is the owner of the van and the third respondent is the Insurance Company. The case of the appellant is that on 30.07.2018 at about 4.00 P.M., when the appellant was riding his two wheeler bearing Reg. No.TN 56 J 9220, at that time, a Eicher van bearing Reg. No.TN 56 C 7596 driven by its driver in a very rash and negligent manner, dashed against the appellant and he was thrown away and sustained grievous injuries and admitted in the hospital. Thereafter, the appellant filed a claim petition before Tribunal claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him due to the accident that took place on 30.07.2018.

3. Before the Tribunal, during trial, in order to prove the case of the claimant, he has examined three witnesses viz., P.W.1 and P.W.2 and marked 17 documents viz., Exs.P1 to P17. On the side of the respondent, one witness was examined and no document was marked.

4.The Tribunal considering the pleadings, oral and documentary



evidence, awarded a sum of Rs.8,38,000/- after deducting 15% contributory negligence to the claimant as compensation. Not satisfied with the quantum of compensation, the appellant/claimant has come out with this appeal for enhancement.

5.The learned counsel appearing for the appellant contended that due to the accident the appellant's both bones in right and left legs were fractured and he sustained grievous injuries in all over the body, for which he has suffered 28% permanent disability and he could not able to do his work properly. The appellant is aged about 21 years at the time of the accident and working as a Clerk and earned a sum of Rs.20,000/- per month. However, the Tribunal erroneously taken a meager sum of Rs.10,000/- without considering the year of accident and cost of living. Hence this Court may enhance the same. Further the appellant has filed medical bills before this Court (Ex.C2) for the treatment taken by the appellant. This court may award compensation in respect of medical bills. Hence, the appellant prays to enhance the compensation awarded by the Tribunal.

6. Per contra, learned counsel appearing for the third



respondent/insurance company submitted that at the time of the accident, the appellant has not wore helmet and the negligence fixed on the appellant is wholly reasonable, which does not warrant any interference. After considering all the materials, the Tribunal awarded compensation to the claimant for the injuries sustained by him, which does not require any enhancement. The entire allegation of the appellant is not true. To get a large amount of compensation, he has filed this case. However, he prays for dismissing the appeal.

7. Heard the learned counsel for the appellant as well as the second respondent and also perused the materials available on record.

8. The appellant is the claimant. Admittedly, the accident had happened in the year 2018. It is not disputed that the accident had occurred only due to the rash and negligent driving of the driver of the van. According to the claimant, the Tribunal has fixed 15% negligence on him, which is wholly illegal and also fixed compensation in respect of loss of earning and permanent disability are very meager.



9. It is the main contention of the respondent is that the appellant has not wore helmet at the time of the accident and therefore, fixed 15% negligence on the appellant is perfectly in order, which warrants no interference.

10. On careful reading of the impugned order, it is found that the appellant was working in private and in order to prove his income, he has not produced any document. Therefore, the Tribunal has fixed the income of the appellant at Rs.10,000/- , which is just and reasonable, which needs no interference. However, the tribunal has fixed at Rs.3000/- for permanent disability, which is low. Considering the nature of injuries sustained by the appellant and the Doctor has assessed the disability at 28% as permanent disability, this Court is inclined to modify the same as per the catena of decision passed by the Hon'ble Apex court at Rs.7000/- per percentage. (Rs.7000/- X 28% = Rs.1,96,000) The appellant has produced the medical bills before this Court and the appellant is entitled to get the medical bills. In respect of the other heads awarded by the Tribunal are just and reasonable and the same are confirmed. The award amount of compensation is modified under the following heads :-



Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of earning	1,20,000	1,20,000
2	Transportation	10,000	10,000
3	Extra nourishment	10,000	10,000
4	Attendar charges		
5	Future Medical exp.		
6	Damages for clothes	3,000	3,000
7	Medical expenses	5,52,000	5,52,000
8	Pain and sufferings	1,50,000	1,50,000 1,08,182
9	Permanent Disability & Loss of earning power	1,40,000	1,96,000
	Total	9,85,000	11,49,182/-
After deducting 15% negligence		8,37,250/- (Rounded off to Rs.8,38,000/-)	9,76,804/- (Rounded off to Rs.9,76,800/-)

11. The compensation awarded by the Tribunal is modified as above and accordingly, the appeal is allowed. However, there shall be no order as to costs. The third respondent is directed to deposit the enhanced amount of Rs.9,76,800/- (Rupees Nine lakhs seventy six thousand eight hundred only) along with interest at 7.5% p.a., from the date of claim petition till date of



deposit, less the amount, if

any, already deposited, to the credit of the claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order.

On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

20.12.2023

Index : Yes / No

Speaking Order : Yes/ No

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To

Motor Accident Claims Tribunal, Special Sub Court, Erode.



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M.DHANDAPANI.,J.

Rli

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