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CMA No. 956 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 956 of 2022

V.Suriya

...

Appellant

Versus

1.Sri Ambal Agencies,
No.3/136, North Street,
A. Valavanthi Main Road,
Thalamalaipatty Post, Namakkal Taluk,
Namakkal District.
(R-1 remained exparte before the Tribunal)

2.M/s. Oriental Insurance Company Limited,
KVA Complex, No.90-A, Thuraiyur Road,
Namakkal Taluk and District. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 21.08.2017 made in M.C.O.P. No.721 of 2016 on the file of the MACT / Additional District Court at Namakkal.

For Appellant : Mr. Lokesh
for Mr.C. Ramaraj

For Respondents : Mr.Eleveera Ravindran for R2
No appearance for R1



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JUDGMENT

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The appeal has been filed by the petitioner challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 721 of 2016 dated 21.08.2017.

2. The appellant had filed the claim petition before the Tribunal stating that on 17.02.2015, while he was riding as a pillion rider in a two wheeler bearing Registration No.TN28 AL 7536 on the left side of the road towards East to West direction on the Duraiyur – Namakkal main road, near Nallipalayam Earikarai Kasthuri Patty Bus stop cut road, opposite to mortuary, an auto bearing Registration No.TN28 AM 6540 which was coming in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle in which the appellant was riding as a pillion rider and caused the accident. In the said accident, the appellant sustained grievous injuries and thus filed claim petition claiming a sum of Rs.25,00,000/- as compensation against the respondents.

3. The first respondent remained ex-parte before the tribunal.



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4. The second respondent filed counter denying all the averments made in the claim petition. The accident occurred only due to the rash and negligent riding by the rider of the motorcycle. The rider of the motorcycle did not possess valid driving licence at the time of accident. The owner and insurer of the motorcycle were not impleaded as parties to the claim petition. Hence, the petition is bad for non-joinder of necessary parties. The age, occupation and income of the appellant are denied. The compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

5. The appellants examined two witnesses on their side and marked Exs.P.1 to Exs.P.13. The second respondent examined two witnesses on their side and marked Exs.R.1 to Exs.R.3. Three documents were marked as Exs.X.1 to Exs.X.3.

6. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the auto belonging to the first respondent and directed the second respondent/insurance company to pay a sum of



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Rs.8,22,200/- as compensation to the appellant, at the first instance and recover the same from the first respondent since the driver of the auto does not possess valid driving licence at the time of accident. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant has preferred the instant appeal.

7. The learned counsel for the appellant submitted that at the time of accident, the appellant was aged 19 years, working as a carpenter, earning a sum of Rs.15,000/- per month. In the accident, the appellant sustained grievous head injury, fracture of left hand and fracture of right leg compensation due to which he is unable to do his work as he was doing earlier. The notional monthly income fixed by the Tribunal at Rs.6,500/- for the accident which took place in the year 2015 is meagre. The learned counsel further submitted that PW2-doctor issued Ex.P.11/disability certificate assessing the disability sustained by the appellant as 48%. However, the Tribunal without any basis, reduced the disability to 40% and awarded compensation. The learned counsel further submitted that the compensation awarded by the Tribunal under the heads pain & sufferings, extra nourishment, loss of amenities, transportation and attender charges are meagre and prayed for



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enhancement of compensation.

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8. Though notice has been served on the first respondent and his name has been printed in the cause list, none has entered appearance on behalf of the first respondent.

9. The learned counsel for the second respondent per contra submitted that the appellant did not subject himself to the Medical Board. The disability certificate issued by PW2-doctor ought not to have been accepted by the Tribunal. The appellant has not proved that he has suffered functional disability and hence the Tribunal ought not to have awarded compensation by adopting multiplier method. The appellant has not produced any documents to substantiate his avocation and income. In the absence of any material documents, the notional monthly income fixed by the Tribunal is just and reasonable. Considering the nature of the injuries, the disability assessed by PW2-Doctor at 48% is on the higher side. The compensation awarded by the Tribunal under different heads are also on the higher side and prayed of dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well



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as the second respondent and perused the materials available on record.

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WEB COPY 11. The short question involved in this instant appeal is “whether the appellant is entitled to enhancement of compensation under the head loss of income”.

12. From the materials on record, it is seen that the appellant was working as a carpenter at the time of accident. The accident had taken place in the year 2015. Though the appellant has claimed a sum of Rs.15,000/- towards his monthly income, he has not proved the same. Considering the cost inflation index and the fact that the daily wage workers are also earning substantially at the relevant point of time and even taking a conservative view of the matter, this Court is of the view that the notional income of the appellant can be fixed at Rs.12,000/- per month. However, since there is no evidence to prove that the appellant suffered loss of future earning capacity, he is not entitled to enhancement under the head future prospects.

13. Further, it is seen that PW2-Doctor has examined the appellant and assessed the disability of the appellant as 48%. PW2-Doctor has not assessed the functional disability of the appellant. However, the Tribunal



had reduced the disability of the appellant to 40% and awarded compensation by adopting multiplier method. It is seen from the evidence of PW1 & PW2 that the appellant had suffered the following injuries -

1. RTA with anterior frontal hemorrhagic contusion.
2. Bilateral cerebral parietal and frontal cortical sulcal spaces acute sub arachnoids hemorrgage with sub dural pneumocephalus.
3. Multiple linear displaced as well as depressed commmented fractures involving walls of both maxillary, ethnocide, sphenoid sinuses.
4. Fracture left orbit, left frontal, nasal, bony nasal septum
5. Fracture syphilis and para syphilis of left mandible
6. Fracture of both mandible condoyle and dislocation of both temporal mandible joints with adjacent scalp and facial soft tissue hematoma.
7. Left forearn fracture
8. Left olecranon fracture
9. Facial nerve fracture

14. The appellant has also stated in his deposition that on account of the injuries, he is unable to carry on his job in the manner as he was doing earlier. Considering the nature of injuries and the evidence



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adduced by the parties and the nature of job pursued by the appellant, this Court is of the view that the functional disability can be fixed at 25%. Thus, the compensation under the head loss of income is modified as follows :

$$\text{Rs.12,000} \times 12 \times 18 \times 25/100 = \text{Rs.6,48,000/-}.$$

15. The amounts awarded by the Tribunal under the other heads are just and reasonable. Hence, the same need not be interfered with. 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
1.	Loss of income	5,61,600	6,48,000	Enhanced
2.	Medical expenses	2,25,640	2,25,640	Confirmed
3.	Pain and sufferings	10,000	10,000	Confirmed
4.	Loss of amenities	10,000	10,000	Confirmed
5.	Extra Nourishment	5,000	5,000	Confirmed
6.	Transport Expenses	5,000	5,000	Confirmed
7.	Attendant Charges	5,000	5,000	Confirmed
	Total	8,22,240/-	9,08,640/-	Enhanced by



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	rounded off to Rs.8,22,200	rounded off to Rs.9,08,600	Rs.86,400/-
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16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,22,200/- is hereby enhanced to Rs.9,08,600/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. It is made clear that the appellant is not entitled for any interest for the delay period, on the amount of Rs.86,400/-, enhanced by this Court as per the order of this Court dated 26.06.2023 made in C.M.P.No.18322 of 2021 in C.M.A. SR.No.94324 of 2021. The appellant is directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

2. The Section Officer,
VR Section
High Court, Madras.

C.M.A. No.956 of 2022

Dated: 28.07.2023