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CMA.No. 1520 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1520 of 2022

R. Anandan

...Appellant

Versus

1.A. Balaji

2.United India Insurance Company Limited

represented by its Divisional Manager, Vellore

Respondent

Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the Civil Procedure Code, against the Award and Decree dated 23.07.2019 in MCOP.No. 673 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant	:	Ms.N. Premalatha
For R1	:	No Appearance
For R2	:	Mr.M. Krishnamoorthy

JUDGMENT



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WEB COPY The above appeal is filed by the claimant seeking enhancement of compensation.

2. According to the claimant, on 17.09.2012, while he was returning home after delivering firewood in his two wheeler, an autorickshaw bearing Registration No. TN-23-BB-4423 driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the claimant's two wheeler, causing him grievous injuries.

3. According to the claimant, he was aged about 43 years at the time of accident and was doing Masonery work and earning a sum of Rs.15,000/- per month. The claimant, therefore, filed the claim petition claiming a sum of Rs.14,00,000/- as compensation along with 9% interest for the injuries sustained by him in the accident.

4. The first respondent the owner of the autorickshaw remained ex-parte and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance



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Company filed a detailed counter affidavit denying all the averments made in the claim petition apart from disputing the liability, negligence and quantum of compensation.

5. Before the Claims Tribunal, the claimant examined himself as PW1 and Ex.P1 to Ex.P6 were marked in support of the claim. On the side of the 2nd respondent/Insurance Company, no oral and documentary evidence was adduced.

6. The Claims Tribunal on an assessment of the entire evidence on the record, rendered a finding of negligence against the driver of the first respondent. The Tribunal assessed the compensation at Rs.1,33,800/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the award passed by the Tribunal, the claimant preferred the above appeal for enhancement of compensation.

7. The learned counsel for the appellant submitted that the



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assessment of notional income by the Tribunal for an accident which occurred in the year 2012 was very much on the lower side. The learned counsel further submitted that considering the nature of injuries sustained by the claimant and the period of hospitalization undergone by the claimant, the Claims Tribunal ought not to have awarded reasonable compensation towards the other heads. The learned counsel, therefore, pleaded that the compensation may be enhanced.

8. The learned counsel for the 2nd respondent/Insurance Company, on the other hand, submitted that the Tribunal ought not to have adopted the multiplier method and the assessment of notional income and the award towards other heads were just, fair and reasonable and did not call for any interference in the appeal.

9. I have heard the learned counsel for both sides and perused the materials placed on record.

10. In the absence of any evidence the Claims Tribunal assessed



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the notional income of the claimant at Rs.6,000/- per month. However, considering the socio economic conditions prevailing in the year 2012, I am of the view that the income assessed by the Tribunal is on the lower side and therefore, the notional income is fixed at Rs.9,000/- per month. The claimant suffered fracture open segment soft of the 5th metacarpal and ORIF with 'K' wire fixation was done. The claimant also sustained laceration wound 3x1x1 cm., abrasion 3x3 cm in the right hand with exposure of bone. He took treatment as inpatient for the period from 17.09.2012 to 05.10.2012 and surgery was also conducted on 21.09.2012. The Medical Board assessed the permanent disability at 10%.

11. Considering the above facts, I am of the view that the award of the Claims Tribunal towards the other heads also needs to be enhanced.

12. It is further seen that the Tribunal awarded a sum of Rs.2,000/- towards “loss of amenities”. As the multiplier method was adopted, the Tribunal ought not to have awarded compensation towards “loss of amenities”. Therefore, the amount awarded towards loss of amenities is set aside.



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13. In view of the above discussions, the award of the Tribunal is modified as follows:-

<i>S.No</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Permanent Disability	Rs.1,00,800	Rs.1,51,200
2.	Pain and Suffering	Rs.10,000	Rs.20,000
3.	Loss of earning	Rs.12,000	Rs.18,000
4.	Medical Expenses	Rs.2,000	Rs.2,000
5.	Loss of Amenities	Rs.2,000	---
6.	Extra Nourishment	Rs.2,000	Rs.5,000
7.	Transportation	Rs.2,000	Rs.15,000
8.	Attender Charges	Rs.2,000	Rs.6,000
9.	Damage to articles	Rs.1,000	Rs.1,000
	Total	Rs.1,33,800	Rs.2,18,200

Permanent Disability
= Rs.9,000 x 12 x 14 x 10% permanent disability
= Rs.1,51,000/-

14. In the result, the claimant is entitled to Rs.2,18,000/- along with 7.5% interest from the date of claim petition till the date of deposit.

15. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that the entire award amount awarded by



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the Tribunal along with accrued interest was already deposited before the Tribunal.

16. In the light of the said submission, there shall be a direction to the 2nd respondent/Insurance Company to deposit the balance enhanced compensation amount of R.84,400/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is entitled to withdraw the same by making appropriate application before the Tribunal.

17. The appeal is accordingly partly allowed. There shall be no order as to costs.

22.06.2023

Index : Yes / No

Speaking Order : Yes/ No

Neutral Citation : Yes/No

To



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1. The I Additional District and Sessions Court,
Motor Accidents Claims Tribunal, Vellore.

2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.

N. MALA, J



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msm

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