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C.M.A.No.3640 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3640 of 2019

G.Kamalam

... Appellant

vs.

1. R.Vijay Anand

2. M/s.United Insurance Company Ltd.

CB Hub, 1st Floor,

No.104-A, Peramanur Main Road,

Peramanur,

Salem- 636 007

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, pleaded to enhance the award against the Judgment and decree dated 13.08.2018 in M.C.O.P.No.1547 of 2016 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem.

For Appellant : Mr.A.Sathish Kumar for
Mr.C.Thangaraju

For Respondents : R1 – No such person
Mr.C.Paranthaman for R2



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JUDGMENT

Not being satisfied by the award passed by the Tribunal, the appellant/claimant herein has preferred the Civil Miscellaneous Appeal against the Judgment and decree in M.C.O.P.No.1547 of 2016 dated 13.08.2018 passed by the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem for enhancement for compensation.

2. The claim petition was filed under Section 166 of Motor Vehicle Act read with Rule 3 of Tamil Nadu Motor Vehicle Accident Claims Tribunal Rules claiming compensation of Rs.25 lakhs for the injuries sustained by the appellant/claimant herein in the road accident that occurred on 26.06.2016. The Tribunal, after hearing both side arguments and upon considering the oral and documentary evidence put forth, has granted compensation of Rs.3,73,027/- with 7.5% interest from the date of filing of the petition till the date of deposit.

3. The learned counsel appearing for the appellant would strenuously argue that the disability was assessed as 35.39% and the Tribunal has granted only Rs.3,000/- per percentage of disability which is



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very less. He would contend that considering the nature of injury, Rs.5,000/- per percentage of disability has to be awarded. Further, the award amount granted towards loss of earning, the monthly income fixed by the Tribunal is on the lower side and under other heads also, the amount awarded by the Tribunal is very low and hence, he sought for enhancement.

4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company would vehemently contend that the injured was given treatment only for 8 days as inpatient. Based on the injuries sustained and the treatment taken by her, the award passed by the Tribunal is in order and hence, needs no interference. Therefore, he prayed for dismissal of the appeal.

5. Heard the rival submissions put forth by the learned counsel for both sides and perused the entire materials available on record.

6. As regards the accident, it is the evidence of P.W.1 namely the appellant/claimant that on 26.06.2016 at about 7.30 p.m., while he was standing near Muniyandi Vilas Hotel, situated at Sivananthapuram, a Bajaji motorcycle bearing Regn. No.TN-37-CP-3811 which came in a rash and



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negligent manner and with great speed, lost its control and hit on him, which is not in dispute.

7. It could be seen from the evidence of P.W.1/appellant/claimant that for the fracture suffered by her over her both hands and left leg, she was treated as inpatient at Coimbatore Richmond Hospital for a period of 8 days. From the Discharge Summary – Ex.P.4 and the disability certificate - Ex.P.6 it is evident that she had “malunion of left tibia and left radius”. The disability was assessed as 35.39%. The date of accident is 26.06.2016 and at the time of accident she was stated to be 50 years old and was working as agricultural coolie and was earning Rs.10,000/- per month.

8. As regards the notional income, in **Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, the Hon'ble Supreme Court has fixed the monthly income of a Vegetable Vendor aged 24 years as Rs.6,500/- for the accident occurred in the year 2008. Hence, forthwith this Court deems it fit to fix the income of the appellant at Rs.9,500/- per month. The Tribunal has awarded loss of income for four months. This Court considering the fracture suffered by the appellant/claimant, grants Rs.47,500/- towards loss of income for 5 months by fixing the monthly income at Rs.9,500/- i.e.



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Rs.23,500/- is granted in addition to the amount already granted by the Tribunal for loss of income during treatment period (Rs.9,500/- x 5 months = 47,500/-). Further, an amount of **Rs.15,000/-** is granted towards loss of amenities in addition to the amount already granted by the tribunal.

9. Further, considering the fractures suffered by the appellant/claimant, a sum of Rs.1,59,255/- is granted for permanent disability by fixing Rs.4,500/- per percentage of disability i.e. **Rs.53,085/- is granted in addition** to the amount already granted by the Tribunal (Rs.4,500/- x 35.39% = Rs.1,59,255/-).

10. With regard to other heads, the amount awarded by the Tribunal is reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For pain and suffering	Rs.25,000/-	Rs.25,000/-	Confirmed
2	For loss of income	Rs.24,000/-	Rs.47,500/-	Enhanced
3	Towards medical expenses	Rs.1,84,107/-	Rs.1,84,107/-	Confirmed



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
4	Towards transport charges	Rs.7,000/-	Rs.7,000/-	Confirmed
5	Towards nutritious food	Rs.10,000/-	Rs.10,000/-	Confirmed
6	Towards attender charges	Rs.10,000/-	Rs.10,000/-	Confirmed
7	Towards damage to clothes	Rs.1,750/-	Rs.1,750/-	Confirmed
8	For loss of amenities	Rs.5,000/-	Rs.20,000/-	Enhanced
9	For permanent disability (Rs.3,000/- x 35.39%)	Rs.1,06,170/-	Rs.1,59,255/- (Rs.4,500/-x35.39%)	Enhanced
	Total	Rs.3,73,027/-	Rs.4,64,612/-	Enhanced

11. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.3,73,027/-** to **Rs.4,64,612/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from

Rs.3,73,027/- to **Rs.4,64,612/-**.



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(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.4,64,612/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.1547 of 2016, on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1) Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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Index : Yes/No
Speaking / Non-speaking order
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R.KALAIMATHI, J.,

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To:

1. The Motor Accident Claims Tribunal (Special Sub Judge No.1),
Salem,
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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