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CMA.No.4085 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.4085 of 2019

K.Venkatesan

Appellant

Vs

1. Stalin

2. ICICI Lombard General Insurance Company Limited
Chennai-34

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 12.04.2019, made in MCOP.No.5957 of 2013, by the Small Causes Court, Special Sub Court No.1 (MACT) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.G.Anandan-R2
R1-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 12.04.2019, made in MCOP.No.5957 of 2013, by the Small Causes Court, Special Sub Court No.1 (MACT) Chennai.
2. The claimant has filed the above claim petition, seeking a compensation of Rs.10,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 28.07.2013. The 1st Respondent herein/owner and rider of the offending two wheeler remained exparte. The claim petition was resisted, by the 2nd Respondent/ Insurance Company, by



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filing a counter. On the side of the claimant, PW.1 to PW.2 were examined and Ex.P1 to Ex.P13 were marked and the 2nd Respondent marked Ex.R1.

3. Finding that the accident had occurred only due to the rash and negligent driving of the rider of the offending two wheeler, the Tribunal has awarded a total compensation of Rs.1,43,634/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability	30000.00
2	Pain and Suffering	20000.00
3	Extra Nourishment	10000.00
4	Transportation Expenses	3000.00
5	Medical Expenses	38364.00
6	Attender Charges	1000.00
7	Loss of Earnings	21000.00
8	Loss of Future Prospects	20000.00
Total Compensation		143364.00

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellant, the claimant suffered bilateral temporal haemorrhagic contusions, right side fronto, temporal, partial



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minimal extra cerebral haematoma, minimal left side temporal extra cerebran hemotoma, fracture left mastoid and left side temporal partial bone, which are grievous in nature and though the PW.3 Doctor assessed the disability as 25%, the Tribunal erred in fixed the same at 10% and hence, the compensation towards the disability is to be enhanced. Further, the compensation awarded under the other heads are also to be enhanced.

7. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper and since it is a case of injury, the compensation awarded under the head of future prospects cannot be sustained.
8. Considering the medical records, Ex.P1 to Ex.P7, such as discharge summary, CT.Scan report and MRI scan report and the evidence of PW.3 Doctor, who assessed the disability of the claimant at 25%, it would be appropriate to fix the permanent disability at 25%. Accordingly, the compensation awarded under the head of disability is enhanced to Rs.75,000/- (Rs.3000 x 25). The compensation awarded under the head of future prospects is set aside, since it is a case of injury.
9. Considering the nature of injuries and the fractures suffered by the claimant and the period of treatment, as seen from the medical records, the compensation of Rs.20,000/- towards pain sufferings, Rs.10,000/- towards extra nourishment, Rs.3000/- towards transportation charges and Rs.1,000/-



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towards attendant's charges awarded by the Tribunal are enhanced to Rs.30,000/-, Rs.15,000/-, Rs.5,000/- and Rs.5,000/- respectively. The compensation awarded under the heads of medical expenses, which is borne out by medical records and the loss of earnings, are retained.

10. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.1,89,364/-, (Rupees one lakh eighty nine thousand three hundred and sixty four only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability (25x3000)	75000.00
2	Pain and Suffering	30000.00
3	Extra Nourishment	15000.00
4	Transportation Expenses	5000.00
5	Medical Expenses	38364.00
6	Attender Charges	5000.00
7	Loss of Earnings	21000.00
Total Compensation		189364.00

The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire compensation amount with interest, by filing proper application. No costs.

12.04.2023



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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Small Causes Court, Special Sub Court No.1 (MACT) Chennai
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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