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CMA No. 2011 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2011 of 2023

Thennarasan @ Thennarasu

... Appellant

Versus

1.R.Suman

2.IFFCO Tokio General Insurance Co. Ltd.,
No.128, Habibullah Road,
T.Nagar, Chennai – 600 017.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.7211 of 2018 dated 24.03.2023, on the file of the Motor Accidents Claims Tribunal (In the V Court of Small Causes, at Chennai).

For Appellant : Mr. Amar D. Pandiya

For Respondents : R1 - Exparte
Mr.B.Sivakollappan for R2



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J U D G M E N T

The instant appeal has been filed seeking enhancement of compensation awarded by the Tribunal.

2. The appellant filed a claim petition stating that on 10.10.2018 at about 19.30 Hours, while he was travelling as a pillion rider in the motorcycle bearing Reg.No.TN-03-K-7174, the offending motorcycle belonging to the first respondent insured with the second respondent came in a rash and negligent manner and rammed into the two-wheeler, in which, the appellant travelled, as a result of which, the appellant fell down and sustained grievous injuries and thus, entitled to compensation.

3. The first respondent remained exparte before the Tribunal.

4. The second respondent/Insurance Company filed a counter denying the averments made in the claim petition and stated that the rider of the offending vehicle was a minor and hence, there was a violation of the insurance policy and therefore, the second respondent was not liable to pay compensation; and that in any event, the compensation claimed was successive and prayed for dismissal of the claim petition.

5. The appellant examined two witnesses as P.W.1 and P.W.2 and marked seventeen documents as Exs.P1 to P17. The second respondent examined R.W.1 and R.W.2 and marked eight documents as Exs.R1 to



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R8. The Disability Certificate issued by the Medical Board was marked as Ex.C.1.

6. The Tribunal after considering the oral and documentary evidence held that the accident took place due to the negligence of the rider of the offending vehicle insured with the second respondent and the rider did not have a valid driving license at the time of the accident. The Tribunal therefore, directed the second respondent/Insurance Company to pay the compensation of Rs.3,89,000/- and recover it from the first respondent.

7. The learned counsel for the appellant submitted that the appellant who was a polio patient had sustained “*Grade II C3 Distal Femur Fracture and Shaft of 2nd MTB right leg/lacerated wound right knee*”. The Medical Board assessed the disability at 19% as permanent disability. However, the Tribunal had erroneously awarded compensation only by adopting Percentage method instead of the Multiplier method. The learned counsel also submitted that the compensation under the other heads is also meagre and therefore, requires enhancement.

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel sought permission of this Court to dispense with



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notice to the first respondent and made an endorsement to that effect.

Hence notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent/Insurance Company *per contra*, submitted the appellant had admitted that he was working as a clerk in a private company; that there is absolutely no evidence to show that he had suffered any functional disability; that therefore, the Tribunal was right in adopting the Percentage method to award compensation. The learned counsel also submitted that the award of compensation under the other heads is just and reasonable and no interference is called for.

10. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

11. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12. On perusal of the records, it is seen that the appellant was affected by polio and due to the accident, he sustained the following



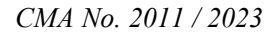
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injuriously “*Grade II C3 Distal Femur Fracture and Shaft of 2nd MTB right leg/lacerated wound right knee*” as per Ex.P2/Discharge Summary.

The Medical Board assessed the disability as 19% as permanent. Considering the fact that the accident is of the year 2018, the appellant was doing a desk job as a clerk, the nature of injuries and the disability assessed by the Medical Board, this Court is of the view that the functional disability can be assessed as 10%. Considering the avocation, age of the appellant and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.15,000/- per month as notional income of the appellant. In the facts, the appellant would not be entitled to enhancement towards future prospects. The multiplier applicable is “18”. Therefore, by adopting Multiplier method, the disability is calculated as follows:

$$\text{Rs.15,000/-} \times 12 \times 18 \times 10/100 = \text{Rs.3,24,000/-}$$

Further, the appellant would have suffered Loss of Income for a period of three months. Considering the nature of injuries, the award under the head Loss of Income has to be enhanced from Rs.24,000/- to Rs.45,000/- (Rs.15,000/- X 3). The compensation awarded by the Tribunal under the heads Pain and Suffering and Loss of Amenities is enhanced to



Rs.6,69,000/- break-up as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	95,000/-	3,24,000/-	Enhanced
2.	Medical Expenses	1,66,441/-	1,66,441/-	Confirmed
3.	Loss of income	24,000/-	45,000/-	Enhanced
4.	Pain and Suffering and Mental Agony	30,000/-	50,000/-	Enhanced
5.	Transportation Expenses	10,000/-	10,000/-	Confirmed
6.	Nutrition Expenses	20,000/-	20,000/-	Confirmed
7.	Damages to Clothes	1,000/-	1,000/-	Confirmed
8.	Attender Charges	2,500/-	2,500/-	Confirmed
9.	Loss of Amenities	40,000/-	50,000/-	Enhanced
	Total	3,88,941/- rounded of to Rs.3,89,000/-	6,68,941/- rounded of to Rs.6,69,000/-	Enhanced by Rs.2,80,000/-



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13. With the above modification, this Civil Miscellaneous Appeal

is partly allowed and the compensation awarded by the Tribunal at Rs.3,89,000/- is hereby enhanced to Rs.6,69,000/- 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, at the first instance within a period of six (6) weeks from the date of a receipt of a copy of this Judgment and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

13.09.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The V Court of Small Causes,
Motor Accident Claims Tribunal,



Chennai.



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



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SUNDER MOHAN, J

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