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CMA No. 2766 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2766 of 2022

P.Rajagopal

... Appellant

Versus

1. K. Suguna

2. National Insurance Company Limtid,
2nd Floor, LRN Building,
Saradha College Road,
No. 53, Salem Taluk, Salem District.

(The 1st respondent remain ex-parte before the
tribunal. Hence may be dispense with for R-1
in this Appeal)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.
No. 739 of 2020 dated 22.03.2022 on the file of the Motor Accidents
Claims Tribunal, Special Sub Court No.1 at Salem.

For Appellant : Mr. M. Lokesh.

For Respondents : Mr. S. Vaidvel for R2.

R1 – ex parte.



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J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 739 of 2020 dated 22.03.2022.

2.The appellant had filed claim petition seeking compensation before the Tribunal stating that on 26.05.2020, when the appellant was riding the two wheeler bearing Registration No. TN 29 BJ 5221 along with the pillion rider on Tharamangalam – Omalur Main road, a eicher van bearing Registration No. TN 25 AM 5062 driven by its driver in a rash and negligent manner, which was proceeding on the same road before the two wheeler, took a sudden right turn without any signal, as a result of which the two wheeler dashed the van and the appellant sustained grievous injuries all over the body and was admitted in hospital.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the rash and negligent driving of the appellant; that the claim petition is bad



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for non-joinder of necessary parties; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.

5. The appellant examined one witness on his side as PW.1 and marked Ex.P.1 to Ex.P.18. On the side of the second respondent, neither any witness has been examined nor any document has been marked. Further, Ex.C.1 and Ex.C.2 have been marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the van belonging to the first respondent and awarded a compensation of Rs.29,56,571/- to the appellant to be paid by the second respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that due to the injuries suffered by the appellant, his right leg above the knee was amputated. The Medical Board assessed 85% permanent disability. The appellant was working as a Mason and was earning Rs.15,000/- per



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month. However, the Tribunal had fixed meagre notional income at Rs.7,500/- per month. Hence, he prayed for enhancement by fixing the higher notional income.

8.Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellant has sought permission of this Court to dispense with the notice to the first respondent and filed verified petition and made endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable. The appellant has claimed Rs.30,00,000/- and the Tribunal has awarded Rs.29,56,571/- as compensation and therefore, no interference is called for and prayed for dismissal of the appeal.

10.The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?



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11. On perusal of the records, it is seen that the appellant examined himself as PW1 and had stated that he was working as a Mason. The accident is said to have taken place in the year 2020. 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 the notional income at Rs.15,000/- per month. Since the appellant was aged 26 years at the time of the accident, he is entitled to 40% enhancement towards future prospects and the multiplier applicable is 17. It is seen that the Tribunal considering the injuries and the disability certificate issued by the Medical Board had fixed the functional disability at 85%. There is no infirmity in the functional disability fixed by the Tribunal in view of the injuries suffered by the appellant as revealed from Ex.P.7 discharge summary, Ex.C.1 disability certificate and Ex.P.17 photographs. Therefore, the loss of income would be $\text{Rs.15,000} + \text{Rs.6000/- (40\% of Rs.15,000)} = \text{Rs.21,000} \times 12 \times 17 \times 85/100 = \text{Rs.36,41,400/-}$. The award under the other heads are just and the same are confirmed. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the award of the Tribunal is modified as



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follows;

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and sufferings	1,00,000	1,00,000	Confirmed
2.	Medical Expenses	6,84,871	6,84,871	Confirmed
3.	Transport Expenses	50,000	50,000	Confirmed
4.	Extra nourishment	25,000	25,000	Confirmed
5.	Attender charges	25,000	25,000	Confirmed
6.	Damages to clothes	1,000	1,000	Confirmed
7.	Loss of amenities	1,00,000	1,00,000	Confirmed
8.	For fixing External leg	1,50,000	1,50,000	Confirmed
9.	Loss of earnings	18,20,700	36,41,400	Enhanced
	Total	29,56,571	47,77,271 rounded off to 47,77,300	Enhanced by Rs.18,20,700/-

12. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.29,56,571/- is hereby enhanced to Rs.47,77,300/- 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 is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a



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period of eight (8) weeks from the date of a receipt of copy of this Judgment. 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.

30.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court No.1,
Salem.

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



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SUNDER MOHAN, J

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