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C.M.A.No.1538 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1538 of 2017

P.Mani

... Appellant

vs.

1. Ramesh

(R1 remained exparte before the Tribunal,
hence his presence may be dispensed with)

2. ICICI Lombard Motor Insurance Co. Ltd.

1st Floor

Arinichant Plaza, No.84 and 85

Wall Tax Road,

Chennai – 600 087

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the award dated 19.08.2016 made in M.A.C.T.O.P.No.1666 of 2012 on the file of the Motor Accident Claims Tribunal/III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1 - Exparte

Mrs.R.Sreevidhya for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant herein against the Judgment and decree passed in M.C.O.P.No.1666 of 2012 dated 19.08.2016 on the file of the Motor Accident Claims Tribunal, Chennai (III Court of Small Causes, Chennai) for enhancement of compensation.

2. The claimant had filed the claim petition under Section 166 & 140, 142 of the Motor Vehicles Act and Rule 3 of MACT Rules claiming compensation of Rs.10 lakhs for the injuries sustained by the him in the motor road accident that occurred on 18.03.2012.

3. The Tribunal, after hearing both sides arguments and upon considering the oral and documentary evidences put forth, has passed an award for an amount of Rs.2,09,760/- with 7.5% interest from the date of numbering of the petition i.e.16.04.2012 to till the date of deposit and directed the 2nd respondent/Insurance company to pay the compensation on behalf of the 1st respondent/owner of the erred vehicle.



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4. Reiterating the grounds of appeal, the learned counsel appearing for the appellant would contend that on account of the accident, the claimant suffered total hearing loss. The disability which was fixed by PW3 - doctor as 75%, was reduced to 25% and the disability assessed by another doctor namely P.W.4 as 45% was reduced to 15% by the Tribunal are incorrect. He would further argue that as the appellant/claimant is suffering from deafness, for computation of compensation, multiplier method to have been invoked by adopting multiplicand 14.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company would put forth that in Ex.P.2-Discharge Summary, there is no whisper about the hearing loss or claimant was suffering from related injury. He further contended that the assessment of disability and the compensation awarded by the Tribunal is reasonable, hence needs no interference and prayed for dismissal of the appeal.

6. Heard the rival submissions put forth by both sides' learned counsels. Perused the entire materials available on record.



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7. The manner in which the accident occurred is not in dispute. From the evidence of P.W.1, it is seen that on 18.03.2012 at about 8.00 p.m. while the petitioner was riding as a pillion in the motor cycle bearing Reg.No.TN-10-AE-6629, which was ridden by its rider in a rash and negligent manner from Tambaram to Maduravoyal Bye Pass Road, hit on the lorry bearing Regn.No.TN 04-G-1472, due to which, he fallen down and sustained grievous injuries.

8. The 2nd respondent/insurance company has countenanced the said details in the counter by stating that the owner and insurance company of other vehicle/lorry, were not implicated as parties. The age, avocation, income of the petitioner, place, date and time of the alleged accident were denied as false. It is also further stated that the rider of the motorcycle/1st respondent, does not have valid driving license on the date of accident and the motor cycle was not properly insured on the date of accident and there is violation of policy condition.

9. As regards the violation of policy condition, no evidence was let in by the insurance company. The counter of the 2nd respondent/insurance company reads to the effect that on the date of accident, policy was in force.



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10. As regards the injuries sustained by the appellant/claimant, it can be seen from the Discharge Summary of the Rajiv Gandhi Government Hospital-Ex.P.2 that the appellant/claimant was admitted on 18.03.2012 and got discharged on 27.03.2012. The other treatment records namely Ex.P3 and Ex.P.5 reveal the fact that he had taken treatment at Tagore Hospital and D.D. Medical College and Hospital as well. P.W.3 / Dr.Aadal Arasu has assessed the disability as 75% (Ex.P.8). The following details are found in the treatment records which is extracted herein under;

"History of Loss of consciousness + Ear bleeding + head injury+ pain in left Shoulder +fracture around left shoulder+tenderness over left clavicle."

"Deafness and Ear discharge (both ears) Rhino-sinuitis++Ear bleeding both Tinnitus and Vertigo Head ache-Fever (Meniere Disease) X ray-1 para, Nasal sinuses skull; both mastoids; Chest P.A., X ray Paramasal sinuses skull, Sinustis + Ear (Right adhesive Otisus media) Left Ear CSOM++ (Chronic suppurative Otitis media (with) X Ray both mastoids air cells Sclerosced. Nose-Chronic Maxillary Sinusitis and Chronic Frontal sinusitis with Diviated Nasal septum ++ (left), Throat-Tonsillitis++ (with) Post Nasal discharge ++ Dental Opinion Taken, Chest PA taken, Pure Tone-Audiogram taken, report: Right Ear: moderate Sensory-Neural hearing loss ++ Severe sensory-Neural Hearing loss; left Ear-Total Sensory-Neural Hearing Loss++, Headache, Fever++, vomiting++, Deafness, Ear discharge Tinnitus++ Epistaxis with bleeding from both ears, Tinning Fork-Test, Caloric T"



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11. Therefore, it is made clear that the appellant/claimant had suffered fracture around the left shoulder, total hearing loss of left ear and moderate hearing loss of right ear. It is the evidence of the doctor that the disability has nothing to do with his Mason work. Another doctor/ P.W.4 has assessed the disability as 45%. It was stated that the appellant/claimant had sustained Thoracic injury for which, a surgery was done. For Humerus bone injury, 30% disability was assessed. The doctors who have assessed the disability is not for the whole body. The Tribunal relying upon the disability assessment made by the doctors as mentioned supra, has reduced to 25% and 15% respectively. At the relevant point of time, age of the appellant was 45 years who was said to be working as Mason. Whether as put forth by the learned counsel appearing for the appellant, the multiplier method has to be invoked for calculating the loss of income, has to be seen.

12. The appellant is suffering from hearing loss of one ear which is certainly a disadvantage. But, such issue would have certainly lesser impact while working as a Mason. Therefore, as per the law laid down by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC)***, considering the age, nature of



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injury and the nature of work the claimant undertakes, this Court is of the opinion that multiplier method need not be invoked. That apart, for the disability suffered, per percentage Rs.3,700/- is taken and therefore, for 40%, an amount of Rs.1,48,000/- is granted (Rs.3,700/-x40%). Therefore the claimant is entitled for an amount of **Rs.28,000/-** in addition to the amount already granted by the Tribunal.

13. The date of accident is 18.03.2012. 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 injured Vegetable Vendor aged 24 years as Rs.6,500/- for the accident that occurred in the year 2008. Therefore, the income of the appellant/claimant herein, is fixed as Rs.9,000/- per month. Considering nature of the injuries sustained, towards loss of income for three months, an amount Rs.27,000/- (Rs.9,000/- X 3 months=Rs.27,000/-).

14. 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:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	Pecuniary Loss:			
1	Loss of Income	Rs.21,600/-	Rs.27,000/-	Enhanced
2	Attender charges	Rs. 2,160/-	Rs. 2,160/-	Confirmed
3	Transport	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	Damage to clothing	Rs. 1,000/-	Rs. 1,000/-	Confirmed
	<u>Non Pecuniary Loss:</u>			
6	Pain and Suffering	Rs. 40,000.00	Rs. 40,000/-	Confirmed
7	Damages for Mental and Physical Shock	Rs. 10,000.00	Rs. 10,000/-	Confirmed
8	Disability 40% @ Rs.3000/-	Rs.1,20,000.00	Rs.1,48,000/- (Enhanced from Rs.3,000/- to Rs.3,700/-)	Enhanced
	Total	Rs.2,09,760.00	Rs.2,43,160/-	Enhanced
	Rounded to	Rs.2,09,800/-	Rs.2,43,200/-	



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15. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.2,09,800/-** to **Rs.2,43,200/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

16. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.2,09,800/-** to **Rs.2,43,200/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.2,43,200/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition i.e.16.04.2012** till the date of deposit to the credit of M.C.O.P.No.1666 of 2012 on the file of the Motor Accident Claims Tribunal, Chennai (III Court of Small Causes, Chennai), 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



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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.

27.06.2023

Index : Yes/No
Speaking / Non-speaking order
ksa-2



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To:

1. The Motor Accident Claims Tribunal,
(III Court of Small Causes, Chennai), Chennai

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



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R.KALAIMATHI, J.,

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