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C.M.A.No.1851 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1851 of 2023

Thangaraj

... Appellant

Versus

1.Murugasamy

2.The Divisional Manager,
Divisional Office,
National Insurance Company Ltd.,
Office at Perundurai Road,
Erode – 638 011.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 26.11.2018 passed in M.C.O.P.No.154 of 2017, on the file of the Motor Accident Claims Tribunal, IV-Additional District Court, Bhavani, Erode.

For Appellants : Mr.Ma.P.Thangavel
For R2 : Mr.S.Vadivel

JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.154 of 2017, dated 26.11.2018.



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2.The claim petition was filed stating that on 11.04.2017 at about 06.45 p.m., while the appellant was riding a motorcycle bearing Regn.No.TN 28 AW 6190 near Packiyaraj Two Wheeler Workshop, Old Bus Stand, Bhavani from South to North direction, a Tipper Lorry bearing Regn No.TN 41 P 6271, driven by its driver in rash and negligent manner and dashed against the motorcycle; that due to the said accident, the appellant was thrown away, sustained multiple grievous injuries and admitted in the hospital; that thus, the appellant was entitled for compensation.

3.The 1st respondent/driver-cum-owner of the offending vehicle filed a counter denying all the averments made in the claim petition and stated that the appellant was under the influence of alcohol and invited the accident; that the 1st respondent possessed valid driving license at the time of accident; and that there was no negligence on his part.

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the 1st respondent did not possess valid driving license at the time of accident;



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and hence, the 2nd respondent was not liable to pay any compensation to the appellant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined three witnesses and marked Ex.P.1 to Ex.P.22 on his side. On behalf of the 2nd respondent, neither witness nor document was marked. The disability certificate issued by P.W.2-Doctor was marked as Ex.W1 and the disability certificate issued by the Medical Board was marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence awarded a sum of Rs.7,24,633/- as compensation to the appellant.

7.Aggrieved over the award passed by the Tribunal, the appellant filed the present appeal seeking for enhancement of compensation.

8.The learned counsel for the appellant submitted that the Tribunal had held that the appellant suffered functional disability at 23% and had fixed meagre notional income of Rs,6,500/- without awarding future



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prospects; that the appellant had examined P.W.3 to show that he was doing the business of manufacturing and selling cotton pillows and earning approximately a sum of Rs.30,000/- per month and hence, prayed for enhancement of compensation.

9.The learned counsel for the appellant submitted that the appeal has been filed challenging the quantum of compensation alone and therefore, requested to dispense with notice to the 1st respondent and had made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

10.Per contra, the learned counsel for the 2nd respondent submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for and therefore, prayed for dismissal of the appeal.

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



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12. On perusal of the records, it is seen that the Tribunal considering the disability certificates issued by the Medical Board as well as the Doctor who treated the appellant had found that the appellant suffered 23% functional disability. There is no challenge against the said finding of the Tribunal. However, it is seen that though the appellant had established his avocation through the evidence of P.W.3, he had not proved the exact income earned by him by any acceptable evidence. In such circumstances, the Tribunal had rightly fixed the notional income. However, the notional income fixed by the Tribunal in the facts and circumstance of the case is meagre. Considering the avocation of the appellant, year of accident and evidence of P.W.3, this Court is of the view that it would be just and reasonable to fix Rs.18,000/- as notional income including future prospects. The appellant was aged 37 years at the time of accident. The multiplier applicable is 15. Thus, the award under the head disability or loss of income would be as follows:

$$\text{Rs.18,000/-} \times 12 \times 15 \times 23/100 = \text{Rs.7,45,200/-}$$

The compensation awarded by the Tribunal under other heads are just and reasonable and the same are confirmed. Thus, the compensation



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awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability/Loss of Income	2,69,100	7,45,200	Enhanced
2.	Transportation	40,500	40,500	Confirmed
3.	Extra Nourishment	10,000	10,000	Confirmed
4.	Loss of income during treatment period	25,000	25,000	Confirmed
5.	Pain and Sufferings	25,000	25,000	Confirmed
6.	Medical Expenses	3,55,033	3,55,033	Confirmed
	Total	7,24,633	12,00,733	Enhanced by Rs.4,76,100/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,24,633/- is hereby enhanced to Rs.12,00,733/-, 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 2nd 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 period of four (4) weeks from the date of a receipt of copy of this



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Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
IV-Additional District Court, Bhavani,
Erode.

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



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SUNDER MOHAN, J.

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