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C.M.A.No.638 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.638 of 2023

R.Munusamy

... Appellant

vs.

1.Mohan Doss

2.Reliance General Insurance Co. Ltd.,
Reliance House, No.6th Floor,
Haddows Road,
Nungambakkam,
Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.783 of 2017 dated 15.10.2020 on the file of Motor Accident Claims Tribunal (VI Small Causes Court), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.P.Sureshrinivasan

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J U D G M E N T

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This Civil Miscellaneous Appeal is filed to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.783 of 2017 dated 15.10.2020 on the file of Motor Accident Claims Tribunal (VI Small Causes Court), Chennai.

2. According to the claimant, on 09.12.2016, while he was riding as a pillion rider in a motor cycle, another motor cycle driven by its driver in a rash and negligent manner came in the opposite direction dashed against the claimant's motor cycle causing him grievous injuries. The claimant therefore filed the claim petition seeking a sum of Rs.10,00,000/- as compensation.

3. The first respondent remained ex-parte before the Tribunal and the claim petition was contested by the second respondent. The second respondent filed its counter denying all the averments made in the claim petition, apart from disputing the negligence, liability and quantum.



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4.Before the Claims Tribunal, the claimant examined himself as PW1 and Ex.P1 to Ex.P11 were marked through PW1 and the petitioner in O.P.No.784 of 2017 was examined as PW2 and Ex.P12 to Ex.P23 were marked through PW2 and Dr.Saravanabhavantham, was examined as PW3 and Ex.P24 to Ex.P27 were marked through PW3. On the side of the second respondent no witnesses were marked and no exhibits were marked.

5.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the driver of the first respondent's vehicle. The Claims Tribunal assessed the compensation at Rs.1,21,071/- along with 7.5% interest and mulcted the liability on the second respondent Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

6.The learned counsel appearing for the claimant submitted that the Tribunal has awarded very meagre amount under the heads of pain and suffering, extra nourishment, transport charges, attender charges and loss of amenities. He further submitted that the Claims Tribunal failed to award



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any compensation under the head of loss of earning.

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7.The learned counsel appearing for the second respondent on the other hand submitted that the award passed by the Tribunal was fair just and reasonable and did not call for any interference.

8.I have heard both the learned counsels and have perused the materials on record.

9.It is seen that the claimant sustained fracture of head, Meta Tarso Phalangeal Joint (3rd, 4th 5th) right foot and dislocation at the same place, fracture of proximal phalanx 2nd, 3rd toe, and Haemarthrosis of knee joint was done (Blood Aspiration done) . The disability certificate Ex.P27 was issued by PW3 whereunder the disability was assessed at 20%. It is seen that the petitioner had undergone hospitalisation on 09.12.2016 to 12.12.2016 and 28.12.206 to 02.01.2017 i.e. for 10 days. The petitioner was a welder by profession and earning a sum of Rs.1,000/- per day. Considering the nature of the injuries and the period of hospitalisation underwent by the claimant, I am of the view that the claimant would be



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entitled to enhanced compensation under the heads pain and suffering, extra nourishment, transportation, attender charges, and loss of amenities. The Tribunal has not awarded any sum towards loss of earning. Due to the injuries sustained the claimant would not have attended work for atleast three months. Though Rs.1,000/- is claimed as daily wage, in the absence of any evidence, Rs.200/- is taken as daily wage and the monthly income is assessed at Rs.6,000/-. Therefore, a sum of Rs.18,000/- at the rate of Rs.6,000/- per month for three months is awarded towards loss of earning. In view of the above discussion, the award of the Claims Tribunal is modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Disability compensation (5000 x 15 %)	Rs.75,000/-	Rs.75,000/-
2	Pain and suffering	Rs.15,000/-	Rs.25,000/-
3	Extra Nourishment	Rs.10,000/-	Rs.15,000/-
4	Transportation	Rs. 5,000/-	Rs.10,000/-
5	Damages to clothes	Rs. 1,000/-	Rs. 1,000/-
6	Attender Charges	Rs. 4,000/-	Rs.10,000/-
7	Loss of Amenities	Rs.10,000/-	Rs.15,000/-



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8	Medical Expenses	Rs. 1,017/-	Rs. 1,017/-
9	Loss of earning	NIL	Rs.18,000/-
TOTAL		Rs.1,21,071/- Rounded off to 1,22,000/-	Rs.1,70,017/-

10.In the result, the claimant shall be entitled to the enhanced compensation of Rs.1,70,017/- along with 7.5% interest. The Insurance company is directed to deposit the enhanced compensation i.e. Rs.1,70,017/- along with 7.5% interest, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made the claimant shall be entitled to withdraw the same.

11.The appeal is therefore partly allowed. There shall be no order as to costs.

06.06.2023

Index : yes/no

Internet : yes/no

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To

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

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

N.MALA, J.

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