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C.M.A.No. 706 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N. MALA

Civil Miscellaneous Appeal No. 706 of 2022

S. Velayutham

...Appellant

Versus

1. C. Aathavan
2. The Manager
National Insurance Company Limited
No. 751, Mount Road
Chennai - 600 002.

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 22.01.2020 made in M.C.O.P.No. 29 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Chengalpattu.

For Appellant : Mr. S. Udhaya Kumar
For First Respondent : Set Ex-parte before the Tribunal
For Second Respondent : Mr. S. Vadivel

JUDGMENT

This appeal is filed by the claimant seeking enhancement of compensation for the injuries sustained by him in the accident that took



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place on 28.09.2014.

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2. According to the claimant, on 28.09.2014, when he was proceeding in his motorcycle bearing Registration No. TN-22-CP-1576, a motorcycle bearing Registration No. TN-21-AT-3971, which was driven by its rider in a rash and negligent manner hit on the rear side of his motorcycle. Due to the impact, the claimant sustained grievous injuries. According to the claimant, he was doing Welding and Centring work and earning a sum of Rs.15,000/- per month at the time of accident. Due to the accident, he lost his livelihood and he could not work as before. Therefore, the claimant filed the claim petition claiming a sum of Rs.20,00,000/- as compensation.

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

4. The second respondent/Insurance Company filed a detailed counter affidavit in the claim petition denying the liability, negligence and quantum of compensation.



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5. Before the Claims Tribunal, the claimant examined himself as P.W.1., and Exs.P.1 to P.14 were marked in support of his claim. On the side of the respondents, one witness was examined as R.W.1 and Ex.R1 to R3 were marked and Ex.C1 - Disability Certificate was marked as Court document.

6. The Claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.4,41,144/- as compensation along with 7.5% interest against the first respondent however, it directed the second respondent/Insurance Company to pay the compensation and thereafter, recover it from the first respondent. Not satisfied with the award of the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

7. The learned counsel for the appellant submitted that the award of the Tribunal under the head "loss of earning capacity" was very meagre and also the award under various heads, was also very much on the lower side. The learned counsel submitted that the assessment of income of the claimant at Rs.6,500/- per month was incongruous with the



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then prevailing cost of living. According to the counsel as the claimant was aged about 27 years at the time of accident and was doing welding and centring work, the Tribunal ought to have assessed the income of the claimant atleast at Rs.9,000/- per month.

8. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the award of the Tribunal was just and fair and did not call for any interference in the appeal.

9. I have heard the learned counsel for the appellant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

10. It is seen that in the absence of any evidence in proof of the income claimed by the claimant, the Tribunal assessed the income at Rs.6,500/- per month. Taking note of the fact that there was no documentary evidence filed to prove the income and considering that the accident occurred in 2014, in my view, the Tribunal was justified fixing the notional income of the claimant at Rs.6,500/- per month. The Tribuna



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fixed the functional disability at 15%. On that basis the Tribunal awarded the sum of Rs.1,98,900/- ($\text{Rs.78,000/-} \times 15\% = \text{Rs.11,700/-}$). According to the learned counsel for the appellant, the disability suffered by the appellant would affect his future prospects to a considerable extent and therefore, the Tribunal ought to have taken the functional disability atleast at 30% instead of 15%. In this context, it is seen that the Tribunal in para No.30 of the judgment stated that "no doubt the injuries sustained by the petitioner as noted in the discharge summaries i.e., Right inferior temporal lobe small Heamatoma/Zygomatic Arch fracture would affect the earning capacity of the petitioner to some extent even if he is going for coolie work." Having observed as above, the Tribunal, in my opinion ought to have fixed the functional disability at 30% instead of 15%. Accordingly, the compensation awarded by the Tribunal towards "loss of earning capacity" is modified as under:-

Monthly notional income of the claimant-appellant Rs.6,500/-
Annual loss of notional income Rs.78,000/-
Future loss of earning capacity due to functional disability 30%
 $\text{Rs.78,000/-} \div 30\% = \text{Rs.23,400}$
Multiplier to be applied - 17
 $\text{Rs.23,400} \times 17 = \text{Rs.3,97,900/-}$

Hence, the claimant shall be entitled to Rs.3,97,000/- towards "loss



11. The amount awarded by the Tribunal towards other heads like expenses towards conveyance, extra nourishment and attender charges are enhanced keeping in view the nature of injuries sustained by the claimant and the period of hospitalisation undergone by the claimant for the treatment of injuries sustained by him. Therefore, I am of the view that the impugned award of the Tribunal needs to be modified as under:-

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Expenses relating to treatment, hospitalization and medicines:	Rs.1,88,244	Rs.1,88,244
2.	Expenses towards conveyance	Rs.6,000	Rs.15,000
3.	Extra Nourishment Cost	Rs.3,000	Rs.10,000
4.	Attender Charges	Rs.3,000	Rs.15,000
5.	Damages for Clothing and Articles	Rs.2,000	Rs.2,000
6	Compensation for the loss of future earning capacity and for disability	Rs.1,98,900	Rs.3,97,900
7.	Compensation for Pain and Suffering	Rs.20,000	Rs.20,000
8.	Compensation for loss of future amenities	Rs.20,000	Rs.20,000
	Total	Rs.4,41,144	Rs.6,68,144

12. The compensation awarded by the Tribunal is enhanced to Rs.6,68,144/- along with 7.5% interest from the date of claim petition till



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the date of deposit.

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13. The learned counsel for the second respondent/Insurance Company submitted that the amount as awarded by the Tribunal has already been deposited before the Tribunal.

14. In view of the aforesaid submission, there shall be a direction to the second respondent/Insurance Company to deposit the balance amount along with 7.5% interest from the date of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. The claimant is entitled to withdraw the amount, on such deposit being made, by making appropriate application before the Tribunal. It is made clear that the second respondent/Insurance Company is at liberty to recover the entire compensation along with interest, from the first respondent/ owner of the vehicle in question.



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15. For the foregoing reasons, the appeal is partly allowed. There shall be no order as to costs.

07.06.2023

Speaking Order: Yes/No
Neutral Citation: Yes/No
MSM

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Chengalpattu.
2. The Section Officer, V.R.Section,
High Court, Madras.



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N. MALA, J

MSM

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