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CMA.No.2944 of 2022

CMA No.2944 of 2022
and CMP No.18653 of 2022

RMT.TEEKAA RAMAN.J

This matter is listed today under the caption 'for being mentioned', at the instance of the learned counsel for the appellant, stating that at paragraph No.11(iii) of the judgment pronounced in CMA No.2944 of 2022, dated 03.03.2023, the claim petitioner/appellant was permitted to withdraw the entire enhanced award amount, and prays to remove the word, 'enhanced'.

2. Heard the learned counsel for the appellant and perused the documents.

3. Registry is directed to remove the word, 'enhanced', from paragraph No.11(iii) and issue a fresh judgment copy, forthwith.

21.04.2023

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CMA.No.2944 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.02.2023	Pronounced on 03.03.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2944 of 2022

P.Thangadurai
S/o.Ponnusamy
No.154, Pudhu Colony
Vannathur Village, Nallur Post,
Veppur Taluk.

... Appellant

Vs.

1.Kumaravel, S/o.Velappan
No.175, Tiruchengodu Road,
Namakkal Dt. 637001.

2.The New India Assurance Company Ltd.,
Motor TPHUB, Divisional Office
No.179, Jawaharlal Nehru Street
Pondicherry.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decretal award passed by the learned III Additional District & Sessions Judge, Cuddalore at Vridhachalam (Motor Accident Claims Tribunal) dated 24.11.2021 in MCOP.No.483 of 2018.



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For Appellant : Mr.S.Udhayakumar

For Respondents : Ms.S.R.Sumathy (for R2)
R1 – Dispensed with

J U D G M E N T

The Appeal has been filed against the fair and decreetal award passed by the learned III Additional District & Sessions Judge, Cuddalore at Vridhachalam (Motor Accident Claims Tribunal) dated 24.11.2021 in MCOP.No.483 of 2018.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed MCOP.No.483 of 2018, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 07.11.2018. The Tribunal has awarded a sum of Rs.17,13,596/- with interest at the rate of 7.5% per annum. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.



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4.The factum of the accident, manner of the accident are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court in this regard are hereby confirmed.

5.During the trial, on the side of the claim Petitioner, PW1 was examined, Ex.P.1 to Ex.P.20 were marked and on the side of the Respondents, none was examined and no document was marked.

6.Heard the learned counsel for the claim Petitioner and learned counsel for the Insurance Company on the point of quantum of compensation.

7.In support of his claim, the claim Petitioner examined himself as PW1. Based upon Ex.P.20/disability certificate, issued by the Board, the Tribunal had fixed the permanent disability of the claim Petitioner at 79%, as he had suffered fracture on right hand shoulder and there is fracture on right leg, plate and screw also fixed on right femur and there was shortening of two inches of the leg. The claim Petitioner was working as a tea master at the time of the



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accident and due to the injuries sustained by him in the accident, he could not perform his work as before. Considering the nature of injuries, the Tribunal has thought it fit to adopt multiplier method, since the injuries has resulted in functional disability and accordingly, fixed a sum of Rs.17,13,596/- as compensation and hence the Appeal on the point of quantum of compensation.

8.After perusing the evidence of PW1 coupled with documents, I find that the claim Petitioner had suffered by functional disability and hence adoption of multiplier method as per the judgment of the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar & another* reported in **2010 (2) TNMAC 581 SC** is just and proper. At the time of the accident, the claim Petitioner is said to be 35 years old and therefore, '16' was applied as multiplier. As per Ex.P.20/disability certificate, the Tribunal fixed the disability suffered by the claim Petitioner as 79%. The same is hereby confirmed. Since the accident is of the year 2018, monthly income of the claim Petitioner is fixed at Rs.12,000/-, 40% to be added towards future prospects and therefore, monthly income of the deceased fixed at Rs.16,800/- (Rs.12,000/- + 40% of 12000). The claim Petitioner was taking treatment as inpatient for a period of 20 days in a hospital,



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and hence, the Tribunal has awarded a sum of Rs.20,000/- towards attender charges. The same is hereby confirmed. A sum of Rs.30,000/- is awarded towards future medical expenses. Accordingly, the loss of income sustained by the claim Petitioner is re-assessed as follows:

$$\text{Rs.16,800/-} \times 12 \times 16 \times 79/100 = \text{Rs.25,48,224/-}$$

Compensation awarded towards other heads by the Tribunal are also hereby confirmed.

9.The Tribunal has fixed 10% as contributory negligence on the part of the claim Petitioner for not possessing valid driving license. The same is hereby confirmed. The Tribunal has fixed another 15% as contributory negligence on the part of the claim Petitioner for riding the vehicle without wearing helmet, the same is reduced to 10% and accordingly, the total contributory negligence on the claim Petitioner is fixed at 20%.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of income	2548224
2	Pain and sufferings	100000
3	Loss of amenities	30000
4	Attender charges	20000
5	Nutrition and extra nourishment	30000



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<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
6	Medical expenses	178626
7	Transportation	15000
8	Future medical expenses	30000
	Total	2951850
	80% of compensation	2361480
	Rounded off	2361500

The Tribunal has awarded interest at the rate of 7.5 % per annum. The same is hereby confirmed.

10.In total, the claim Petitioner is entitled to a sum of Rs.23,61,500/- (Rupees twenty three lakh sixty one thousand five hundred only).

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.17,13,596/- to Rs.23,61,500 /- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount (excluding the default period of 7 days) before the Tribunal, within a period of



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eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

03.03.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J,

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To
The III Additional District & Sessions Judge,
Cuddalore at Vridhachalam (Motor Accident Claims Tribunal)

Pre-delivery Judgment made in

C.M.A.No.2944 of 2022

Dated: 03.03.2023