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C.M.A.No.3889 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3889 of 2019

V.Elumalai

... Appellant

vs.

1. Mrs.D.Radha

2.Reliance General Ins. Co. Ltd.

Motor III Party Claims Office

Raj Towers, Plot No.2054, 2nd Avenue

2nd Floor, Anna Salai, Chennai-2

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and decree made in MCOP NO.1988 of 2014 on the file of II Judge, Small Causes Court at Chennai dated 6th day of June 2019.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.P.Suresh Srinivasan for R2
R1-Refused



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and decree passed in M.C.O.P.No.1988 of 2014 dated 06.06.2019 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai), Chennai, for the enhancement of compensation.

2. The claim application was filed under Section 166 of the Motor Vehicles Act, 1988 and under Rule 3 of MACT Rules claiming compensation of Rs.15 lakhs for the injuries sustained by the appellant / claimant in the Motor road accident that had taken place on 21.03.2014. The Tribunal, after hearing both sides and upon considering the oral and documentary evidence, has granted compensation of Rs.2,35,000/- payable by the 2nd respondent/insurance company, with interest at the rate of 7.5% per annum, from the date on which the petition was taken on file till the date of deposit.

3. Reiterating the grounds of appeal, Mr.T.G.Balachandran, the learned counsel appearing for the appellant would strenuously contend that



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on account of the accident, the appellant/claimant sustained “Comminuted Subrochantric Fracture Femer Right Side. The doctor, who is examined as P.W.2/Dr.Saravanabavanandham, has assessed the disability as 30%. The Tribunal has taken disability as 10%. At the best, the Tribunal ought to have taken the disability as 25% by reducing 5% disability. Though Ex.P.7- Rough estimate in respect of future medical expenses was marked, no amount was granted under this head. Further, no amount was granted under the heads of loss of amenities and loss of earning during treatment period. He further contended that in respect of the medical bills-Ex.P.5 for a sum of Rs.1,34,603/- was produced, the Tribunal, holding that there is no dispute over it, granted only an amount of Rs.1,30,000/- towards medical expenses. He also contended that with regard to the loss of earning capacity, in view of the disability suffered by the appellant and due to which he is not able to attend his work as he did before, multiplier method has to be invoked. To strengthen his argument, the following judgments were referred to;

(i) In ***Rajkumar Vs. Ajaykumar and Another reported in (2011) 1 SCC 343*** wherein, the Hon'ble Supreme Court has held that the injured claimant was a Cheese Vendor and on account of accident, he suffered



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fracture of both bones of left leg and fracture of left radius. The Tribunal has taken the disability of 45% which is shown in the disability certificate, as economic disability. In appeal, the High Court rejected for increase in compensation on the ground that the disability certificate was not reliable and the Supreme Court held that the Tribunal overlooked the fact that the disability referred to 45% disability with reference to left lower limb and not in regard to the functional disability of the body. The Hon'ble Apex Court assessed the permanent functional disability of body of the injured/claimant as 25% and a stress was made by the Hon'ble Apex Court that the percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not with reference to a particular limp.

(ii) ***In C.M.A.No.1134 of 2015 Judgment dated 16.06.2015 (The Managing Director, Tamil Nadu State Transport (Villupuram) Limited Vs. Hyder Ali)***, this Court has confirmed the Judgment of the Tribunal wherein, the claimant had suffered fracture of both bones in his right leg viz., tibia & fibula and after treatment, he suffered malunion of bones resulting in inability to walk normally and restriction of the movement of the right ankle. The Tribunal has taken the disability as 30% though the



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disability was assessed as 45% and by invoking multiplier method, an amount of Rs.2,97,000/- was granted, which was confirmed by this Court.

4. Per contra, Mr.P.Suresh Srinivasan, learned counsel for the 2nd respondent/Insurance company vehemently contended that as regards the future medical expenses, the claimant has not undergone any surgery for the removal of implant. He further contended that the Tribunal, after taking into consideration the oral and documentary evidence, has granted amounts under various heads and the same appear to be reasonable and hence, they need no interference.

5. The manner in which the accident had taken place is not in dispute. From the evidence of P.W.1, it is seen that on 21.03.2004, at about 8.30 hours, while the appellant/claimant was traveling in a motorcycle with his daughter, bearing Regn.No.TN09-BP-3874 along Old Mambalam Road to Govindan road junction from South to North direction, a motorcycle bearing Regn.No.TN-09-BP-0304, came from East to West direction in a rash and negligent manner, hit his motorcycle, thereby caused the injuries.



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6. To substantiate the case of the appellant, the appellant and Dr.Saravanabavanantham have been examined as P.W.1 and P.W.2 respectively. As many as 16 documents have been marked on the appellant/claimant's side as Ex.P.1 to Ex.P.16. Discharge summary issued by the Pallava Hospital is marked as Ex.P.4. Ex.P.5 is the series of medical bills. The estimate as regards the future medical expenses is marked as Ex.P.7.

7. On the respondents' side, neither any oral evidence nor documentary evidence was let in.

8. The appellant/claimant is said to be running a tea stall. Tea Stall licence is marked as Ex.P.10. It is, therefore, evident that he has been continuously running tea stall. It could be seen from Ex.P.4-discharge summary that he sustained "Comminuted Subrochantric Fracture Femer Right Side" and he had undergone a surgery where "Open Reduction/Reconstruction of Nailing was done under S.A. on 24.03.2014. It is also evident that he was treated as inpatient for 9 days. The disability is assessed by Dr.Saravanabavanantham-P.W.2 as 30%. The disability was fixed by the Tribunal as 10%. The Tribunal held that there is no evidence to



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show that his nature of job or income is lost. Femur bone is the thigh bone.

Of course, after treatment, the claimant would definitely find it difficult to lift the weight and climbing up. However, as the claimant, who is running a tea stall, would not find much difficulties in continuing the same. Therefore, the question of invoking multiplier method for the loss of income does not arise. However, taking into consideration the age of the appellant and the injuries sustained during the course of accident and also its impact on the avocation, an amount of **Rs.5,000/-** is awarded in addition to the amount already awarded by the Tribunal with regard to disability.

9. Due to the fracture suffered by the appellant and the surgery underwent by him, an amount of **Rs.24,000/-** is granted towards loss of income for 3 months by fixing his monthly income as Rs.8,000/-. An amount of **Rs.10,000/-** is granted for loss of amenities.

10. As regards the medical bills, the Tribunal, after scrutinizing the bills produced, awarded a sum of Rs.1,30,000/-, which needs no interference.

11. As regards the other heads, the amount awarded by the Tribunal



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appears to be reasonable and hence, the same need not be interfered with.

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
1	Disability	Rs.35,000/-	Rs.40,000/-	Enhanced
2	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
3	Extra Nourishment	Rs.25,000/-	Rs.25,000/-	Confirmed
4	Transportation	Rs.20,000/-	Rs.20,000/-	Confirmed
5	Medical Expenses	Rs.1,30,000/-	Rs.1,30,000/-	Confirmed
6	Loss of Income	--	Rs.24,000/-	Awarded
7	Loss of Amenities	---	Rs.10,000/-	Awarded
	Total	Rs.2,35,000/-	Rs.2,74,000/-	Enhanced

12. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.2,35,000/-** to **Rs.2,74,000/-** which would carry interest at the rate of 7.5% per annum from the date on which the petition was taken on file till the date of realisation.

13. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.2,35,000/-** to **Rs.2,74,000/-**.



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WEB COPY (iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.2,74,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date on which the petition was taken on file till the date of realisation to the credit of M.C.O.P.No.1988 of 2014 on 06.06.2019 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) 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 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.

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Index : Yes/No
Speaking / Non-speaking order
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R.KALAIMATHI, J.,

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To:

1. The Motor Accident Claims Tribunal
(II Court of Small Causes, Chennai) Chennai
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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