



C.M.A.No.3065 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3065 of 2017

Manjunath

... Appellant

Vs.

1.N.Ramasamy
2.Bajaj Allianz General Insurance
Company Ltd.,
G.E.Plaza Airport Road,
Yerawada,
Pune-411006
Maharastra State

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 18.04.2017 made in MCOP.No.207 of 2010, on the file of the Motor Accident Claims Tribunal, (Additional Special Court, Krishnagiri).

For Appellants : Mr.P.Mani

For respondents : Mr.P.Chandrasekaran for R1
: Mr.R.V.Sivaraj for R2



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation awarded in MCOP.No. 207 of 2010 on the file of the Motor Accident Claims Tribunal, Additional Special Court, Krishnagiri.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. On 19.07.2009, at about 06.00 p.m., when the claimant was proceeding in the motorcycle bearing Reg.No.TN-24-X5158 along with pillion rider Krishnamma from Shoolagiri, while taking U-turn near Vaniyar Street in Shoolagiri Bye Pass Road, the driver of the car bearing Reg.No.TN-34-D-5657 belonging to the 1st respondent and insured with the second respondent drove the car in a rash and negligent manner and dashed against the motorcycle, which resulted in causing injuries to her and Krishnamma died on the spot. The petitioner admitted in the hospital and discharged on 30.07.2009. A criminal case was registered against the driver of the car bearing Reg.No.TN-34-D-5657 under Section 279 and 338 and 304-A of



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IPC in Crime No.508 of 2009. For the injuries sustained, the petitioner has filed claim petition claiming a sum of compensation Rs.5,00,000/- under Section 166 of the Motor Vehicles Act.

4. The first respondent has not filed the counter and not contested the claim petition.

5. The second respondent filed counter and denied the manner in which the accident had taken place and alleged the negligence on the part of the petitioner. The age, income, occupation and the injuries sustained were disputed.

6. Based on the evidence placed on record, the Tribunal in Point No.1 had considered the negligence and held that negligent act of the driver of the car bearing Reg.No.TN34 D 5657 is responsible for the accident. In Point No.2 the Tribunal has quantified the award of compensation and awarded a sum of Rs.2,39,000/- along with interest at the rate of 7.5% per annum from the date of institution, till the date of realization, as compensation and directed the second respondent the insurer of the offending vehicle is liable



to pay the compensation to the claimant. Aggrieved over the quantum compensation, the claimant herein has filed this Civil Miscellaneous Appeal.

7. I have considered the submissions made both sides and perused the records.

8. To prove the disability and treatment given to the claimant, PW2 the Government Doctor who has assessed the disability of the claimant was examined and he has stated that there there is malunion of both bone after nailing was performed. In the discharge summary, it was recorded that the injured has sustained both bone fracture ie., Tibia and Fibula which has resulted in malunion bones. The Doctor has also stated that wound debridement and external fixation was done which reduced the movements and restricted the regular work of the claimant. On the basis of the disability certificate and opinion of the PW2, the Tribunal has held that the injuries sustained by the claimant is not functional permanent disability. Eventhough PW2 has assessed the disability of the claimant at 45%, the Tribunal has reduced to 35% and awarded Rs.3,000/- per percentage of injury and granted Rs.1,05,000/- under the head permanent disability. There is no evidence to



show that these injuries has resulted in causing loss of earning capacity to the claimant herein. This Court also once again reconsidered the case of the claimant and on perusal of the injuries, which shows that the injured has sustained both bone fracture on the left leg which was malunited. The Doctor has opined that the claimant could not walk for longer distance and could not stand continuously for long period of time and he could not sit and squat. There is no evidence placed on record to show that he was driver by profession and in the absence of any evidence, the Tribunal rightly fixed the notional income of the claimant as Rs.6,000/- per month based on the year in which the accident had taken place. Since no evidence was produced to show the avocation of the claimant, this Court is not inclined to accept the case of the claimant and compensation awarded under the head the permanent disability and loss of income by the Tribunal are hereby confirmed. The Tribunal has awarded Rs.2,000/- under the head Extra Nourishment and Rs.5000/- under the head Transportation Expenses, this Court is of the view that the same requires modification and accordingly enhanced to Rs.10,000/- under each head. Tribunal has not awarded any compensation under the head loss of Amenities and Attender Charges during treatment period between 19.07.2009 to 13.07.2009. Considering the age of the



claimant, this Court awards Rs.20,000/- under the head loss of Amenities and Rs.6,000/- under the head Attender Charges. The compensation awarded under other heads are just, fair and reasonable and the same are hereby confirmed.

9. In the light of the above discussion, the award of the Claims 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	Loss of Income for 3 months (3 x 6000)	18,000/-	18,000/-	Confirmed
2	Compensation for Pain and Suffering	35,000/-	35,000/-	Confirmed
3	Extra Nourishment	2,000/-	10,000/-	Enhanced
4	Medical Expenses	74,000/-	74,000/-	Confirmed
5	Transport Expenses	5,000/-	10,000/-	Enhanced
6	Compensation for continuing as Permanent Disability (35% x 3000)	1,05,000/-	1,05,000/-	Confirmed
7	Loss of Amenities	-	20,000/-	Awarded
8	Attender Charges	-	6,000/-	Awarded



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Total	Rs.2,39,000/-	Rs.2,78,000/-	Enhanced by Rs.39,000/-
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10. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal to Rs.2,78,000/- from Rs.2,39,000/- .

(ii) The second respondent directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the claimant is entitled to withdraw the same by making appropriate application and the apportionment of the Tribunal is confirmed.

(ii) There shall be no order as to costs.

08.09.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K.RAJASEKAR,J.

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To:

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1. The Motor Accident Claims Tribunal,
Additional Special Court, Krishnagiri
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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