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CMA.No.3465 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.3465 of 2017

S.Murugan

.. Appellant

Vs.

1. V.Anbarasan

2.TATA AIG General Insurance Co.,Ltd.,
No.1, Ethiraj Salai
Egmore, Chennai – 8.

(The first respondent was set exparte in lower court) .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 28.07.2017 made in M.C.O.P.No.6151 of 2012 on the file of the Motor Accidents Claims Tribunal/(VI Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.E.Rajadurai for R2

for Mr.M.B.Gopalan Associates

R1 - Exparte

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 28.07.2017 made in M.C.O.P.No.6151 of 2012 on the file of the Motor Accidents Claims Tribunal/(VI Small Causes Court) Chennai.



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WEB COPY 2. The case of the claimant / appellant is that on 27.05.2012 at about 17.00 hours, while the appellant was driving his auto bearing Regn.No.TN-22-BS-4767 from Tambaram to Thiruneermalai direction at Tambaram to Kishkintha Road- Maduravoyal Bye Pass Road junction, near Kadaipalayam, a motor cycle bearing Regn.No.TN-22-BV-0547 driven by its driver in a rash and negligent manner, dashed against the auto, due to which, the auto got capsized and appellant sustained grievous injuries. Claiming that the driver of the auto is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.2,00,000/-

3. The Tribunal, based on the oral and documentary evidences has observed that the driver of the first respondent is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.83,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.



4. The learned counsel for the claimant / appellant has submitted that the decree and judgment of the Tribunal are against the law of facts, evidence and probabilities of the case. The Tribunal went wrong in awarding Rs.15000/- only towards loss of earnings. It ought to have award just compensation considering the grievous injuries, period of treatment and nature of employment. It has erred in reducing the disability from 60% to 10% and awarding Rs.30,000/- only towards loss of earning capacity and disability, Rs.10,000/- towards Transport and Extra Nourishment, Rs.20,000/- towards pain and sufferings and Rs.5000/- towards loss of amenities, Rs.3000/- towards attender charges which are on the lower side. It has also erred in not granting any amount towards medical expenses and future medical expenses and loss of earning power. In any event, the Tribunal erred in awarding compensation at Rs.83,000/- as against the claim of Rs.2,00,000/-. Hence, he prays for enhancement of the Award amount.

5. Before the Tribunal, the Appellant/claimant has examined four witnesses and marked PW1 and PW2 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second respondent/Insurance Company, one witness was examined as RW1 and four documents were



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marked as Ex.R1 to Ex.R4.

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6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss the petition.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. Based on the evidences of P.W.1 and PW2 and perusing the exhibits in Ex.P1/FIR copy; Ex.P2/Accident Register copy; ; Ex.P4/Charge sheet;, the Tribunal has fastened the liability on the rider of the motor cycle bearing Regn.No.TN-22-BV-0547.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that he was a auto driver and was earning Rs.10,000/- per month. The disability of the claimant has wrongly assessed



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as 10% based on cross-examination of PW2/Doctor and Ex.P5 and Ex.P6

and only Rs.3000/- for each percentage was awarded. From the records, it

is seen that he has sustained Gr-II compound Bimellelor, fracture left ankle and multiple injuries all over the body and hence the same needs revisit.

This court is of the considered opinion that Rs.3000/- is the correct assessment for each percentage but the disability has to be taken at 35% and thus fixed Rs.1,05,000/- (3000 x 35%) towards disability. During the said treatment period, he has incurred transport and nourishment expenses and the same may be fixed at Rs.20,000/- and instead of Rs.10,000/- as assessed by the Tribunal.

10. With regard to loss of amenities, the Tribunal has awarded a meagre amount of Rs.5,000/- and hence the same is fixed at Rs.10,000/- by this court. This Court is of the considered view that due to the nature of injuries sustained by the appellant and period treatment given in the hospital as in-patient, this court is inclined to take four months for calculation of loss of income and thus arrived at Rs.30,000/- (7500 x 4 months). Accordingly, the amount awarded towards loss of income stands modified from Rs.15,000/- to Rs.30,000/. Further, on perusal of records, it is seen that the Tribunal has granted a meagre compensation under the head



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of loss of amenities and attender charges at Rs.5000/- and Rs.3000/- respectively. Due to the grievous injuries sustained by the appellant/claimant, he had taken the help of attender for atleast for four months and hence the award granted under the attender charges is fixed at Rs.10,000/-. Accordingly, a sum of Rs.10,000/- towards Loss of Amenities and Rs.5,000/- towards Attender charges respectively are fixed by this court.

11. Insofar as the other head such as pain and sufferings, the assessment of the compensation awarded by the Tribunal is a just compensation and it does not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pain & Sufferings	20,000/-	20,000/-
Transport & Extra Nourishment	10,000 /-	20,000/-
Loss of income	15,000/-	30,000/-
Loss of earning capacity and	30,000/-	1,05,000/-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
disability		
Loss of amenities	5000/-	10,000/-
Attender charges for 6 days	3,000/-	5,000/-
Total	83,000/-	1,90,000

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.83,000/- to Rs.1,90,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the enhanced award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.6151 of 2012 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.



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(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

No costs.

28.03.2023

Index : Yes/No

Internet : Yes/No

gv

A.A.NAKKIRAN, J

gv

To

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

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

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