



WEB COPY



CMA.No.772 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No.772 of 2017

Selvaraji

.. Appellant

Vs.

1.Gunachandran
2.The Divisional Manager,
National Insurance Co., Ltd.,
No.19, Officers Line,
Vellore.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 31.03.2011 made in M.A.C.T.O.P.No.2 of 2009 on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate, Tiruvannamalai.

For Appellant	: Mr.A.Subadra for Ms.M.Malar
For Respondent No.1	: No Appearance
For Respondent No.2	: Mr. D. Bhaskaran

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 31.03.2011 passed by the Motor Accident Claims Tribunal Chief Judicial Magistrate, Tiruvannamalai in M.A.C.T.O.P.No.2 of 2009.



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WEB COPY 2. The case of the claimant / appellant is that on 05.05.2008 at about 08.20 hrs, while the appellant, who was a riding the Hero Honda bike bearing Regn.No.TN-25-C-4271, along with his uncle, was proceeding in the Tiruvannamalai-Tindivanam Road, near RTO office, a two wheeler belonging to the first respondent, bearing Reg.No.TN-25-K-3142, came from the opposite direction driven by the driver of the first respondent in a rash and negligent manner and dashed against the bike, due to which, the appellant sustained grievous injuries. Claiming that the appellant was an agriculturist and commission broker and earning about Rs.5000/- per month and the rider of the two wheeler, is solely responsible for the accident, the appellant / claimant has filed a claim petition claiming a sum of Rs.5,00,000/-.

3. The Tribunal, based on the evidence of P.W.1 and R.W.1 and perusing the exhibits in Ex.R1, has fastened the liability on the first respondent, which has to be indemnified by the second respondent / Insurer and ultimately quantified the total compensation at Rs.65,000/- 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.



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4. The learned counsel for the claimant / appellant submitted that the appellant was an agriculturist-cum-cattle broker and was earning Rs.5000/- per month. The doctor assessed the disability of the appellant as 30% whereas the Tribunal fixed 20% for permanent disability and awarded only a sum of Rs.1000/- per percentage. He further submitted that PW2 deposed that the injured has sustained the bones of the Secom and Maxilla were severely damaged and looked badly; the left jaw movement was restricted and he has difficulty while eating. He further submitted that the Tribunal erred in overall awarding Rs.25,000/- under the heads of Transport expenses, medical expenses and doctor's fees. The Tribunal failed to award compensation under the head of damages to cloth and articles of the insured, mental agony and loss of amenities, future prospectus of the injured, future medical expenses and attender charges. He further submitted that the Tribunal ought to award more compensation under the heads of extra nourishment, medical expenses, pain and sufferings and loss of income, transport expenses; and in any event, the Tribunal erred in awarding compensation at Rs.65,000/- as against the claim of Rs.5,00,000/- The Appellant/claimant sustained injuries like bleeding from the nostril, tenderness over the nasal bone, injury in the right parietal scalp, abrasion in



the upper inner lip, fracture of Zycomatic complex and fracture in the left maxilla bone; at first he was taken treatment at Government Hospital, Thiruvannamai and later, he was referred to Government General hospital, Chennai. The PW2/Doctor assessed the disability as 30% as seen from Ex.P5- disability certificate. But the Tribunal arrived 20% as disability. Hence, he prays for enhancement of Award amount.

5. Before the Tribunal, the Appellant/claimant has examined two 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, two witnesses were examined as RW1 and RW2 and filed three documents which were marked as Ex.R1 to Ex.R3.

6. Per contra, the learned counsel for the second respondent / Insurer submitted that the appellant has to prove his age, occupation, income and the nature of injuries sustained by him. He submits that the rider of the Hero Honda has no driving license and no insurance at the time of accident. Hence this respondent is not liable to pay any compensation to the appellant. The owner and Insurance Company of the Bullet for proper adjudication has not been impleaded. Hence, the petition has to be

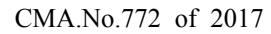


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dismissed for non-joinder of necessary parties to the main petition. The Tribunal has taken into consideration each and every aspect and has awarded just compensation, which does not require any interference at the hands of this Court. He also submitted that this respondent is not liable to pay compensation because the accident occurred solely due to the fault of the appellant only. He further submitted that the quantum of compensation claimed is highly excessive and no legal basis and not sustainable on facts and hence the monthly income fixed by the Tribunal, based on the probabilities of the case, cannot be found fault with. He finally submitted that the amounts awarded by the Tribunal under other heads are also cannot be said to be on the higher side. Hence, he prays for dismissal of the appeal.

7. This Court has considered the said submissions made by the learned counsel for the second respondent and perused the materials available on record. No representation for the first respondent.

8. Based on the evidences of P.W.1 and RW1 and perusing the exhibits in Ex.R1, the Tribunal has fastened the liability on the rider of the two wheeler, which has to be compensated by the Insurer / second respondent herein.



10. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the other heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

11. In fine, the re-structured compensation, item-wise, would



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be thus:

WEB COPY Medical Expenses, Transport,

Extra Nourishment - Rs. 25,000/-

Pain and sufferings - Rs.10,000/-

Disability - Rs. 30,000/-

Loss of income - Rs.10,000/-

Total **Rs.75,000/-**

12. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **allowed**, by enhancing the total amount of compensation from Rs.65,000/- to Rs.75,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit amount.

(b) The second respondent/Insurance Company is directed to deposit the 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 MACTOP.No.2 of 2009 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent, who is the owner of the vehicle, in accordance with law.

Needless to state that the appellant shall pay necessary court fees for the



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enhanced compensation amount before receiving the copy of this judgment.

WEB COPY (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.

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Index : Yes/No

Internet : Yes/No

gv



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To

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



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A.A.NAKKIRAN, J

gv

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