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C.M.A.No.785 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.785 of 2017

K.Boopathy

S/o.Krishnasamy

... Appellant / Petitioner

Vs.

1. S.Raghupathy

S/o.K.Santhanam

2. Reliance General Insurance Company Limited,

No.2054, II Avenue,

Anna Nagar,

Chennai - 600 040.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2015 made in M.C.O.P.No.5442 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court - III, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arun Kumar for R2
Notice dispensed with for R1



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J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.5442 of 2013 filed by the claimant, the petitioner has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. It is the case of the claimant that, on 11.04.2013, at about 7.00 hours, while the petitioner was travelling as a pillion rider in a motor cycle bearing Registration No.TN-22-CE-8893, at that time, a car bearing Registration No.TN-20-BY-1516 driven by its driver in a rash and negligent manner hit against the claimant, due to which, he sustained grievous injuries. Due to the loss suffered on account of the accident, the claimant, claiming compensation for the injuries suffered and also for loss of income, had filed the claim petition. The said claim was resisted by the Insurance Company / second respondent. The first respondent is the owner of the car and the second respondent is the Insurance Company.



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3. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P6 were marked. The Insurance Company did not let in any evidence either orally or documentary. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a compensation of Rs.1,74,989/- and directed the second respondent / Insurance Company to pay the same to the appellant / claimant.

4. The learned counsel appearing for the claimant / petitioner submitted that as regards the compensation awarded towards loss of disability, the Tribunal fixed the disability at 40% instead of 50% and hence, the same may be enhanced to 50%. He further submitted that, when P.W.2- doctor had clearly deposed about the disability suffered by the claimant, the amount of Rs.2,000/- per percentage of disability awarded by the Tribunal is wholly inadequate. It is the further submission of the learned counsel that the loss of income awarded by the Tribunal is on the lower side, which requires to be reconsidered. Further, the amount awarded under various heads also requires to be reconsidered and a higher compensation ought to have been awarded to the claimant



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5. The first respondent remained ex-parte before the Tribunal.

6. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that, the Tribunal taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. However, a sum of Rs.5,000/- awarded towards loss of amenities for a minor injury is not reasonable and hence, the same may be deleted. Further, insofar as the loss of income is concerned, the claimant did not produce any material to show that he has taken treatment for about four to five months and hence, the compensation awarded under the head loss of income is to be reduced.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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8. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded.

9. It is seen from records that, though P.W.2-doctor has assessed the disability at 50%, he has not given treatment to the petitioner and P.W.2-doctor has not given the working sheet for his assessment and there is no follow up records for the treatment. In such circumstances, the disability given by P.W.2-doctor is too high and in any event considering the nature of injury, the Tribunal has rightly fixed the disability at 40%. Further, a sum of Rs.2,000/- awarded per percentage is on the lower side and the same is enhanced to Rs.3,000/- and hence, the compensation awarded under the head disability is enhanced to Rs.1,20,000/- (40% X Rs.3,000/-).

10. It is seen that the Tribunal has awarded Rs.5,000/- towards loss of amenities. On perusal of the records, it is found that, the claimant has suffered only 40% disability as per Ex.P5 - disability certificate and



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Rs.1,20,000/- has been awarded under the said head. Hence, Rs.5,000/-

awarded towards loss of amenities is not warranted and the same is deleted.

However insofar as the head loss of income is concerned, the claimant has not even produced any material to show that he would have suffered loss of income atleast for a period of four months. Hence, this Court finds that by taking the period of treatment underwent by the claimant as four months, the Tribunal has awarded Rs.25,000/- for loss of income for four months, which appears to be excessive. The loss of income for three months alone has to be taken into consideration for awarding compensation, as the claimant has taken treatment as inpatient only for a period of 15 days. Hence, by taking the monthly income of the claimant as Rs.6,000/-, the loss of income for three months works out to Rs.18,000/-, which would be the just and fair compensation for the loss of income during the treatment period of the claimant.

11. Considering the age and the nature of injuries sustained by the appellant, this Court finds that the compensation awarded under the other



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heads are just and reasonable and does not require any interference.

However, insofar as the compensation awarded towards Transportation is concerned, this Court feels that a sum of Rs.7,000/- is on the higher side and the same is reduced into Rs.5,000/

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of Income (3*Rs.6,000/-)	Rs.25,000/-	Rs.18,000/-
2	Transport to Hospital	Rs.7,000/-	Rs.5,000/-
3	Extra Nourishment	Rs.7,000/-	Rs.7,000/-
4	Damage to Clothing	Rs.500/-	Rs.500/-
5	Medical Expenses	Rs.20,489/-	Rs.20,489/-
6	Loss of Amenities	Rs.5,000/-	-
7	Pain and Suffering	Rs.30,000/-	Rs.30,000/-
8	Disability (40% X Rs.3,000/-)	Rs.80,000/-	Rs.1,20,000-
	Total	Rs.1,74,989/-	Rs.2,00,989/-

13. In the result, this civil miscellaneous appeal is allowed in part



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and the compensation awarded by the Tribunal at Rs.1,74,989/- is hereby enhanced to Rs.2,00,989/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.5442 of 2013 on the file of the Motor Accidents Claims Tribunal, Court of Small Causes - III, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. No costs.

13.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji



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1. The Motor Accidents Claims Tribunal,
Small Causes Court- III,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

vji

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