



CMA.No.1130 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1130 of 2019

S.Nandakumar

.. Appellant

Vs.

1.M/s.South India Surgical Co., Ltd.,
No.850, Anna Salai,
Chennai 600 002.
(R1 set ex parte in the trial court)

2. United India Insurance Company Ltd.,
No.158, Purasawalkam High Road,
Chennai 600007
Serviced at United India Insurance Company Ltd.,
Motor Third Party Claims HUB
Silinghi Buildings, No.134, Greams Road,
Chennai 600 006.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 05.02.2016 made in M.A.C.T.O.P.No.4085 of 2011 on the file of the Motor Accidents Claims Tribunal(Special Sub Court I to deal with MCOP cases) Chennai.

For Appellant : Mr.M.Swamikkannu

For Respondents : Mr.D.Bhaskaran for R2

Set exparte - R1

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking



CMA.No.1130 of 2019

enhancement of compensation under the impugned award dated 05.02.2016 made in M.A.C.T.O.P.No.4085 of 2011 on the file of the Motor Accidents Claims Tribunal (Special Sub Court I to deal with MCOP cases) Chennai.

2. The case of the claimant / appellant is that on 03.09.2011 at about 11.00 hours, while the appellant was riding his motor cycle bearing Regn.No.TN-09-BH-2752 from North to South direction along with pillion rider at Anna Salai-Canara Bank junction, a car bearing Regn.No.TN-01-AF-6500, came from the opposite direction in a rash and negligent manner in high speed by ignoring the signal and dashed against the motor cycle. Due to the said impact, the appellant and the pillion rider sustained grievous injuries. Claiming that the driver of the car alone is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.27,00,000/-

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 second respondent/Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.10,48,982/- with interest at the rate of 7.5% per



CMA.No.1130 of 2019

annum from the date of petition till the date of deposit. Aggrieved against the same, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant has submitted that though the Tribunal has correctly held on the question of negligence and liability, has erred in deciding the quantum of compensation payable to the appellant. He further submitted that the Tribunal has erred in awarding a meagre sum of Rs.6000/- towards Transport to hospital, Rs.10,000/- towards extra nourishment, Rs.2000/- towards damages to articles, Rs.8000/- towards attender charges, Rs.50,000/- towards marital prospectus, Rs.50,000/- towards pain and sufferings. He further submitted that the Tribunal has erred in not awarding any amount towards loss of expectation of life and loss of amenities and future additional transport expenses. 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 70% to 55% and awarding Rs.1,65,000/- only towards disability. In any event, the Tribunal erred in awarding compensation at Rs.10,48,982/- as against the claim of Rs.27,00,000/-. Hence, he prays for enhancement of the Award amount.



CMA.No.1130 of 2019

5. Before the Tribunal, the Appellant/claimant has examined three witnesses and marked PW1 to PW3 and filed twenty documents which were marked as Ex.P1 to Ex.P20. On the side of the second respondent/Insurance Company, neither witness was examined nor filed any document.

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 Appeal.

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 and Ex.P17/Copy of charge sheet, the Tribunal has fastened the liability on the driver of the car bearing Regn.No.TN-01-AF-6500.

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 Programme Analyst Trainee in Cognizant Solutions, aged about 23 years earning a sum of Rs.2,75,000/- per annum. Though the PW3/Doctor has assessed the disability of the claimant at 70% in Ex.P18, the Tribunal has wrongly fixed disability of the claimant at 55% and awarded only Rs.1,65,000/- towards disability. From the records, it is seen that he has sustained multiple compound and comminuted fracture in right leg thigh bone, both bone fracture below knee near ankle, major degloving injury and fracture in right leg foot and heel, fracture of nasal bone, severe injury in forehead and skull and multiple injuries in right hand and internal and external injuries all over the body and hence the same needs revisit. This court is of the considered opinion that since the year of accident is 2011, the Tribunal has rightly assessed that Rs.3000/- is the correct assessment for each percentage and also the disability has to be taken at 55% and thus fixed a sum of Rs.1,65,000/- (3000 x 55%) towards disability. Considering the nature of injuries and period of treatment, he must have spent some sum on conveyance expenses and the same may be fixed at Rs.30,000/- instead of Rs.6,000/- as assessed by the Tribunal.



10. On perusal of records, it is seen that the Tribunal has not awarded any amount under the head of future medical expenses. Hence, this court is inclined to grant a sum of Rs.30,000/- under the said head. Due to the grievous injuries sustained by the appellant/claimant, he had taken the help of an attender for a long period and hence the award granted under the attender charges is fixed at Rs.50,000/-. Similarly, it would be appropriate to fix a sum of Rs.30,000/- towards Extra Nourishment. 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 and based on Ex.P15/salary slips, this court is inclined to take eight months for calculation of loss of income and thus arrived at Rs.1,48,440/- (18555 x 8 months) instead of six months as assessed by the Tribunal at Rs.1,11,330/-.

11. Insofar as the other head such as medical expenses, damages to articles, disability, pain and sufferings and loss of amenities, 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:



CMA.No.1130 of 2019

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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Medical Expenses	6,46,652/-	6,46,652/-
Loss of income	1,11,330/-	1,48,440/-
Conveyance expenses	6,000/-	30,000/-
Extra Nourishment	10,000/-	30,000/-
Attender charges	8,000/-	50,000/-
Damages to articles	2,000	2,000/-
Disability	1,65,000/-	1,65,000/-
Pain & sufferings	50,000/-	50,000/-
Loss of amenities	50,000/-	50,000/-
Future medical expenses	NIL	30,000/-
Total	10,48,982/-	12,02,092/-

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.10,48,982/- to Rs.12,02,092/- 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



CMA.No.1130 of 2019

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.A.C.T.O.P.No.4085 of 2011 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.

(d) 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.

03.04.2023

Index : Yes/No

Internet : Yes/No

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CMA.No.1130 of 2019

To

1. The Motor Accidents Claims Tribunal,
/Special Sub Court I to deal with MCOP cases) Chennai.

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



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CMA.No.1130 of 2019

A.A.NAKKIRAN, J

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CMA.No.1130 of 2019

03.04.2023