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CMA.No.444 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.444 of 2019

D.Kannan

Appellant

Vs

1. G,Rathinavelu

2. The Divisional Manager, National Insurance Company Limited

Pondicherry

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 10.08.2006, made in MCOP.No.275 of 2005, by the Chief Judicial Magistrate (MACT) Cuddalore.

For Appellant : Mr.N.Kesavaraj

For Respondents : Mr.G.Anandan-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 10.08.2006, made in MCOP.No.275 of 2005, by the Chief Judicial Magistrate (MACT) Cuddalore, for enhancement of compensation.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the injuries, fractures and disabilities, sustained by him, in a motor road accident, which took place on 06.08.2004 at 11.00 p.m. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a



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counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P12 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.1,40,304.70/- (Rounded Off to Rs.1,40,305/-) with interest at 7.5% p.a. from the date of the claim petition till the date of realization, with costs, to be payable by the 1st Respondent/ owner of the offending vehicle and the 2nd Respondent/ Insurance Company, jointly and severally, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Pain and Suffering	10000.00
2	Nutrition	2000.00
3	Loss of Income During The Period Of Treatment	9500.00
4	Medical Expenses	15804.70
5	Continuing Permanent Disability Suffered By The Claimant	40000.00
6	Loss of Future Earnings Due To The Disability Suffered By The Claimant	60000.00
7	Attendants Charges	3000.00
Total Compensation		140304.70

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. The Appellant herein is the claimant. The 1st Respondent herein, who is the owner of the offending vehicle remained exparte. The 2nd Respondent is the Insurance Company.
6. As regards the negligence aspect, the Tribunal, considering the evidence on



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record, has held that there was negligent on the part of the driver of the offending vehicle, owned by the 1st Respondent herein and that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. Since the finding, recorded by the Tribunal, with regard to the actionable negligence, has not been assailed by anyone of the Respondents herein, the said finding of the Tribunal with regard to the negligence aspect, fixing the same on the part of the 1st Respondent/driver of the offending vehicle, is confirmed. As such, it is not necessary to narrate the entire facts in detail in respect of the accident. However, the dispute is only with regard to the quantum of compensation.

7. According to the learned counsel for the Appellant, the claimant sustained fractures on 5 to 8 ribs of left side, loss of left eye sight and grievous injuries and multiple fractures all over the body and when, as per Ex.P11 disability certificate, the claimant suffered 60% permanent disability, the Tribunal, erred in fixing the same as 40% and it ought to have awarded more compensation under the head of continuing permanent disability. Further, the compensation awarded under the heads of pain and suffering, nutrition and attendant charges needs to be enhanced, considering the nature of injuries.
8. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
9. Considering Ex.P11 disability certificate and other medical records, it would be appropriate to fix the permanent disability at 50%. However, as per the evidence, there is no total disablement caused to the claimant. Hence,



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considering the 50% permanent disability suffered by the claimant, a sum amount of Rs.50,000/- (Rs.1000/- per percentage = Rs.1000x50) for continuing permanent disability is hereby awarded.

10.Considering the nature of injuries and the fractures suffered by the claimant and the period of treatment, the compensation of Rs.10,000/- towards pain sufferings, Rs.2000/- towards nutrition and Rs.3000/- towards attendant charges awarded by the Tribunal are enhanced to Rs.15,000/-, Rs.3000/- and Rs.4,000/- respectively. The compensation awarded under other heads are confirmed.

11.In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.1,57,304.70/-, which is rounded off to Rs.1,57,305/- (Rupees one lakh fifty seven thousand three hundred and five only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Pain and Suffering	15000.00
2	Nutrition	3000.00
3	Loss of Income During The Period Of Treatment	9500.00
4	Medical Expenses	15804.70
5	Continuing Permanent Disability	50000.00
6	Loss of Future Earnings Due To The Disability Suffered By The Claimant	60000.00
7	Attendants Charges	4000.00
Total Compensation		157304.70

The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within



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a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire compensation amount with interest, by filing proper application. No costs.

28.03.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Chief Judicial Magistrate (MACT) Cuddalore
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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