



C.M.A.No.1499 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1499 of 2019

S.Balasubramaniam

... Appellant/Petitioner

Vs.

1.G.Murugan

2.The Oriental Insurance Co.Ltd.,
No.8, Esplanade Road,
UIL Building 4th Floor,
Chennai-108.

[Now at: Oriental House, II Floor,
Old No.15, New No.16, Prakasam Salai,
Broad way, Chennai-108]

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree made in M.C.O.P.No.774 of 2009 dated 18.08.2011 on the file of the Motor Accidents Claims Tribunal, IV Fast Track Court at Chennai.

For Appellants : Mr.A.A.Venkatesan

For Respondents : Notice not ready [R1]
Mr.N.Sampath for [R2]



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JUDGEMENT

Aggrieved by the compensation awarded by the Motor Accident Claims Tribunal, IV Fast Track Court, Chennai in M.C.O.P.No.774 of 2009 dated 18.08.2011, the claimant is before this Court.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) On 09.12.2008, when the petitioner was riding a motorcycle bearing Regn No.TN 04 Az-0292 along Egmore Express road and near Karai Thattiya Kapal direction, a lorry bearing Regn No.TN 03-A-3684, which came in the opposite direction driven in a rash and negligent manner, dashed against the petitioner's bicycle as a result of which, the petitioner was thrown out and sustained grievous injuries. After availing treatment for the said injuries, the appellant has filed a claim petition in M.C.O.P.No.774 of 2009 claiming compensation amount of Rs.6,00,000/-.



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3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 marked Ex.P.1 to Ex.P.13. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.2,50,000/- under various heads. Not satisfied with the same, the present appeal has been filed by the claimant seeking enhancement.

4. The learned counsel appearing for the appellants submitted that the Tribunal had accepted that the accident was caused purely due to the negligence on the part of the lorry driver and accordingly, awarded the compensation amount which is on the lower side and the same requires to be reconsidered. The Doctor P.W.2 had assessed 45% disability, however, the same was not taken into consideration by the Tribunal while granting compensation. Further, the claimant was under treatment in the Hospital for a period of two years and lost his income during the said period which was also not considered by the Tribunal. Hence, the compensation may be awarded under separate heads such as Disability, Loss of Income and other heads as well. Accordingly, he prays for appropriate enhancement in favour of the



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appellant.

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5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. 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.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. It is claimed by the appellant that the compensation awarded by the Tribunal under various heads is grossly inadequate and that the Tribunal has not awarded compensation under separate heads which requires reconsideration by this Court.



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8. The Tribunal has awarded a sum of Rs.60,000/- towards “Injuries”; Rs.1,50,000/- towards “treatment and other expenses”; Rs.40,000/= towards "Pain and suffering". Though the Doctor P.W.2 had assessed 45% disability, no compensation has been awarded under the head of “Disability”. Hence, taking into consideration the nature of injuries suffered by the claimant, this Court, by adopting Rs.3,000/- per percentage, is inclined to award a sum of Rs.1,20,000/- towards “Disability” by fixing the disability at 40%.

9. Further, the claimant was under treatment for about two years, which is borne out by records and during that time the claimant would not have earned income, which is purely on account of the accident. It is the case of the claimant that his income was affected during the period in which he was under treatment. Therefore, this Court awards a sum of Rs.30,000/- under the head 'Loss of Income during the Treatment' for a period of six months, by fixing the monthly income at Rs.5,000/- as no proof of income has been filed. Insofar as the compensation awarded towards pain and suffering is concerned, the Tribunal has awarded a sum of Rs.40,000/- towards “Pain and Suffering”



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which is meagre considering the length of treatment and the nature of injuries and the same is enhanced to Rs.1,20,000/-. Further, the Tribunal ought to have awarded compensation under the following heads such as “Extra nourishment”, “Medical expenses” and “Attender Charges” however, no compensation has been awarded under the said heads. On perusal of the documents and the injuries sustained and the treatment taken, this Court feels it is just and reasonable to award a sum of Rs.15,000/- towards “Extra nourishment”; Rs.1,25,000/- towards 'Medical Expenses'; Rs.5,000/- towards “Attender charges”.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Injuries	Rs.60,000/-	-
Treatment and other charges	Rs.1,50,000/-	-
Pain and suffering	Rs.40,000/-	Rs.50,000/- (enhanced)
Loss of Disability (@ Rs.3,000/- x 40%)	-	Rs.1,20,000/-
Loss of Income during Treatment period (@ Rs.5,000/- x 6 months)	-	Rs.30,000/-
Extra nourishment	-	Rs.15,000/-
Medical expenses	-	Rs.1,25,000/-
Attender Charges	-	Rs.5,000/-
Total	Rs.2,50,000/-	Rs.3,45,000/-

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.2,50,000/-** to **Rs.3,45,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.774 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a



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copy of this judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount falling to their share, along with proportionate accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if any, required. The Tribunal below shall disburse the enhanced amount upon proof of payment of Court fee is produced by the appellant/claimant. There shall be no order as to costs in the present appeal.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To
1.I Additional District Judge's Court
IV Fast Track Court,
Chennai.

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



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M.DHANDAPANI, J.

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