



C.M.A.No.2712 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2712 of 2019

S.Thangavelu

...Appellant

Vs.

1. Amuthan

2. Selvam

3. The Divisional Manager,
New India Assurance Co. Ltd.,
No.30, Jawaharlal Nehru Street, 2nd Floor,
Pondicherry.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 03.09.2014 made in M.A.C.T.O.P.No.237 of 2013 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal.

For Appellant : Mr.T.Sai Krishnan
for M/s. Sai Bharath and Ilan

For Respondents : No Appearance, for R1
: Not ready notice, for R2
: Mr.J.Michael Visuvasam, for R3



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JUDGEMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal (District Judge) at Karaikal in M.A.C.T.O.P.No.237 of 2013 dated 03.09.2014, the claimant has come up with this Appeal.

2. The case of the appellant is that, on 25.09.2013 at about 19.45 hours, when the appellant was riding his TVS 50 Moped bearing Regn.No.TN-63-A-1806 on the extreme left of Nagore Main Road, near Neravy Toolyard Road junction, the motor cycle bearing Reg.No.PY-02-N-1472, owned by the 2nd respondent, insured with the 3rd respondent, driven by the 1st respondent in a rash and negligent manner came with high speed and dashed against the appellant, due to which, the appellant sustained grievous injuries all over his body. Thereby, the appellant filed a claim petition claiming a compensation of Rs.6,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.91,000/-. Aggrieved by the said order, the appellant had come up with this appeal seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the above said



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accident happened solely due to the rash and negligent driving of the 1st respondent, for which, the FIR came to be registered as against the 1st respondent and at the time of accident, the appellant was aged about 55 years and was working as a Security in a private company of and was earning a sum of Rs.400/- per day and due to the injuries sustained by him at the time of accident, the appellant suffered 44% permanent disability and due to which he is unable to continue his avocation which he was carrying on before the accident, as a result of which, his earning capacity got reduced and in order to prove the same, the PW2, Doctor who examined the appellant issued a Disability Certificate holding that the appellant sustained 44% permanent disability and the PW2 in his deposition has clearly stated that, the appellant is with equivocal deformity in left leg and wasting and weakness present in the left leg and dorsum of the left foot and stiffness is present in the left knee joint and ankle joint and his movements are completely restricted. However, without considering any of the above said facts, the tribunal, had taken the disability sustained by the appellant as 35% and without adopting multiplier method for the permanent disability sustained by the appellant, the Tribunal had awarded a compensation of Rs. 70,000/- under the head



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“Disability” by adopting percentage method, which is not sustainable and the accident is of the year 2013 and even at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.3,000/- per percentage of disability, however, the tribunal had fixed only a sum of Rs.2,000/-, which is wholly erroneous and the same has to necessarily be interfered with. Further, the compensation awarded by the tribunal under the other heads are also on the lower side. Accordingly, he prayed for appropriate enhancement in favour of the appellant.

4. Per contra, the learned counsel appearing for the 3rd respondent submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant as well as the 3rd respondent and perused the material documents placed on record.

6. 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 appellant is with regard to the quantum of



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compensation awarded. It is claimed by the appellant that, at the time of accident, the appellant was aged about 55 years and was working as a Security and was earning a sum of Rs.400/- per day and though the appellant sustained 44% permanent disability and marked Ex.P6, disability certificate issued in his favour to substantiate the same, however, the tribunal had taken the disability at the rate of 35% and by adopting percentage method, had awarded a meagre compensation of Rs.70,000/- under the head “permanent disability”.

7. A perusal of the claim petition and the impugned award reveals that, the accident is of the year 2013 and at the time of accident, the appellant was aged about 55 years and the appellant alleged that he was employed as Security and was earning a sum of Rs.400/- per day. However, except the oral submission, no documentary evidence has been produced by the appellant to prove his monthly income and therefore, in the absence of any proof, the Tribunal had rightly fixed the monthly income of the appellant as Rs.3,000/- in which this Court does not find any fault with.



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8. Insofar as the disability sustained by the appellant is concerned, though the doctor assessed 44% disability, the tribunal, after considering the nature of injuries sustained by the appellant, had fixed the disability at 35%, which is just and reasonable. However, it is pertinent to note that, as per the existing law at the relevant point of time, a sum of Rs.3,000/- per percentage of disability has to be adopted, however, the tribunal had adopted a sum of Rs.2,000/- per percentage of disability, which is perverse and this Court deems it just and proper to adopt a sum of Rs.3,000/- per percentage of disability. Therefore, the amount under the head “Disability” stands modified to a sum of Rs.1,05,000/- (35% x Rs.3,000/- = Rs.1,05,000/-).

9. Further, the Tribunal has awarded a sum of Rs.10,000/- and Rs.2,000/- under the heads “Mental agony, pain and sufferings” and “rich and nutritious food” respectively. However, considering the fact that the accident is of the year 2013, this Court is of the view that the compensation awarded under the said heads are meager and necessarily the same has to be enhanced.



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10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

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

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Disability	70,000/-	1,05,000/-
Pain, suffering and mental agony	10,000/-	40,000/-
Damages to clothes	1,000/-	1,000/-
Rich and nutritious food	2,000/-	10,000/-
Travelling expenses	2,000/-	2,000/-
Loss of income	6,000/-	6,000/-
Total	Rs.91,000/-	Rs.1,64,000/-

12. Accordingly, the appeal is **partly** allowed in the aforesaid terms and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.91,000/-** to **Rs.1,64,000/-**. The 3rd respondent-insurance company is directed to deposit the above said



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amount awarded by this Court to the credit of M.A.C.T.O.P.No.237 of 2013 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 four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

08.11.2023

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

- 1.The Motor Accident Claims Tribunal / District Judge,
Karaikal.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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