



CMA.No.1437 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1437 of 2019

G.Stanley

...Appellant

Vs

1.D.Veerassamy

2.United India Insurance Co., Ltd.,

No.38, Anna Salai

Chennai – 600 002.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.83 of 2007 dated 29.09.2010 on the file of Motor Accident Claims Tribunal (II Small Causes Court, Chennai)

For Appellant : Mr.S.Parthasarathy

For Respondents : Mr.P.Sankaranarayanan for R2

J U D G M E N T

This appeal has been filed by the appellant / claimant seeking enhancement of compensation under the impugned award dated 29.09.2010 passed by the Motor Accident Claims Tribunal (II Small Causes Court, Chennai) in MCOP.No.83 of 2007.



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2. On 15.09.2006 at 18.30 hours, while the appellant was travelling as a passenger in an auto rickshaw bearing Regn.No.TN-02-S-9007 proceeding from Chetpet to Poonamallee, in Poonamallee High Road, a driver of the auto rickshaw, in a rash and negligent manner, dashed against the MTC bus bearing Regn.No.TN-02-N-0316 coming in the opposite direction, due to which, the claimant sustained grievous injuries. Claiming a compensation of Rs.3,00,000/-, the appellant filed a claim petition before the Tribunal. On perusing the evidence and documents, the Tribunal has awarded Rs.1,84,000/- to the appellant with interest at 7.5% from the date of petition till the date of deposit.

3. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Permanent Disability	1,00,000/-
Loss of Earnings	12,000/-
Transport to Hospital	1,000/-
Extra Nourishment	3,000/-
Medical Expenses	43,000/-
Pain and Sufferings	25,000/-
Total	1,84,000/-

5. Before the Tribunal, the Appellant/claimant examined two witnesses as PW1 and PW2 and filed seven documents which were marked as Ex.P1 to Ex.P7. On the side of the Respondents, neither witness was examined nor document filed.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellant/Claimant submitted that the Tribunal failed to appreciate the oral and documentary



evidences let in by the appellant properly. It has also failed to note that the appellant has sustained grievous injury of fracture of humerus bone of right hand mid and treated conservatively by applying U-slab. It has erred to note that he has sustained injury which resulted in permanent disability and his movement or right hand was fully paralyzed and he could not work. Since he is a auto driver, the right hand is very much necessary and therefore the Tribunal ought to have taken multiplier method and award adequate compensation. But it has awarded only Rs.1,00,000/- towards permanent disability without taking multiplier method. It ought to have awarded maximum compensation for transportation, extra nourishment, medical expenses, pain and sufferings and loss of earnings considering the gravity of injury and also the duration of period of treatment underwent by the claimant. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent denied the age, occupation and income, place and date of accident and cause of injuries, validity of the insurance policy, permit and validity of the driving license of the driver at the time of accident. Moreover, the compensation claimed by the appellant is highly excessive and baseless. He further



submitted that the Tribunal, after analysing the evidences on record, has rightly awarded the compensation to the appellant/claimant and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal fixed the monthly income of the injured at Rs.3000/- and he had taken treatment at Government Hospital, Chennai and Private Hospital, Chetpet, Chennai and Rs.1000/- is awarded towards Transportation and Rs.3000/- towards extra nourishment. The Tribunal has relied upon Ex.P1/FIR and has taken the age of the injured as 40 years. On perusal of records, it is seen that the Tribunal has not properly considered the evidences properly and the documents marked, while fixing the monthly income of the injured at Rs.3,000/-.

10. Taking note of the submissions of the learned counsel for the appellant / claimant and avocation of the claimant, it would be appropriate to fix Rs.5000/- as monthly income of the injured. There is no need to change the period of treatment (four months). If Rs.5000/- is taken as the monthly income of the claimant/injured, then, the loss of earning works out to



Rs.20000/- (Rs.5000x4 months). Accordingly, the amount awarded by the Tribunal towards loss of earnings stands enhanced to Rs.20,000/- instead of Rs.12000/- as assessed by the Tribunal. Similarly, the amount awarded by the Tribunal under the head of Transport to Hospital seems to be on lower side and the same is enhanced to Rs.3000/- by this court. The award granted under the heads of permanent disability at Rs.1,00,000/- is based on the Ex.P7 as assessed by PW2 and hence it does not require any interference of this court. Similarly a sum of Rs.43000/- as awarded under the head of medical expenses is based on Ex.P4 and a sum of Rs.25000/- awarded towards pain and sufferings do not warrant interference by this court.

11. The details of the enhanced compensation are as under:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Permanent Disability	1,00,000/-
Loss of Earnings	20,000/-
Transport to Hospital	3,000/-
Extra Nourishment	4,000/-
Medical Expenses	43,000/-
Pain and Sufferings	25,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Total	1,95,000/-

12. Thus, the appellant / claimant is entitled to the enhanced compensation of Rs.1,95,000/-. It is made clear that for the enhanced amount of Rs.11,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal and also the claimant is not entitled to interest on the total compensation for the condoned delay period of 304 days.

13.The Civil Miscellaneous Appeal is partly allowed. No costs.

14. The second respondent/Insurance Company is directed to deposit the enhanced compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account

A.A.NAKKIRAN.,J.

gv



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of the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

15. Since the compensation amount now awarded is Rs.1,95,000/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced award amount.

Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal/
(II Small Causes Court, Chennai)

2.The Section Officer,
VR Section,
High Court, Madras.

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