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C.M.A.No.1446 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HON'BLE Mr.JUSTICE A.A.NAKKIRAN

CMA. No.1446 of 2019

N.Periyasamy

... Appellant

..VS..

1. P. Arunkarathikeyan

2.B. Kavithai Thendral

3. The Manager,

ICICI Lombard General Insurance Company Ltd.,

ICICI Lombard House,

No.414, Veerasavarkar Marg

Near Siddhi Vinayaka Temple,

Prabhadevi, Mumbai

4.The Manager,

ICICI Lombard General Insurance Company Ltd.,

No.256, J B Towers,

First Floor, rear portion

Indian Bunk, Sakty Road,

Erode HO, Erode.

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.11.2015 made in MCOP.No.54 of 2013 on the file of the Motor Accident Claims Tribunal, (Subordinate Court) Perundurai.

For Appellant

: Ms.M.Sudha

for Mr.C.Munusamy



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For Respondents : Exparte - R1
Mrs. R. Sreevidhya for R2
No appearance – R3
Given up - R4

J U D G M E N T

Aggrieved over the quantum of compensation arrived at by the Tribunal at Rs.2,58,389/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, the claimant / appellant is before this Court. Since challenge to the appeal is only on quantum, this Court deals only with the quantum arrived at by the Tribunal, confirming the negligence aspect.

2. It is the case of the claimant/appellant that on 02.12.2012 at 11.45 p.m., while the claimant was travelling in a Maruthi car bearing Regn.No.TN-67-Y-3811 from Erode to Perundurai main road, near Thangam Nagar pirivu, another car bearing Regn.No.TN-56-C-0006 came in a rash and negligent manner and dashed against the car in which the claimant was travelling, due to which, the claimant / appellant



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sustained injuries all over the body. Claiming that the accident occurred only due to the rash and negligent driving of the 1st respondent, the respondents 3 and 4 are liable to pay compensation, claim petition came to be filed claiming a sum of Rs.8,50,000/- as compensation before the Tribunal.

3. The learned counsel for the appellant would submit that the Tribunal erred in deciding the quantum of compensation payable to the appellant when it is rightly found that the negligence was on the part of the first respondent. Due to the said accident, the claimant took treatment as in-patient for months together and underwent surgeries and incurred medical expenses for more than Rs.1,00,000/- and even now he is taking treatment as out-patient. Even now he is not able to do his day-to-day affairs owing to the physical disabilities. It erred in not awarding any sum towards future medical treatment while it is manifestly proved that the appellant has to take continuous follow up treatment. It has erred in awarding only a sum of Rs.63,028/- while the medical bills have been



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marked to the tune of Rs.1,17,243/-. It erred in not awarding any sum towards damages despite the fact that the appellant had established that the car was smashed on account of the mishap proved through documentary evidence vide Ex.P17. It also erred in awarding lesser sum towards permanent disability when the Doctor assessed the disablement of the claimant as 32% was examined as PW2 and he marked the disability certificate and X-ray as Ex.P26 and Ex.P.27 respectively. It grossly erred in not awarding any sum towards loss of amenities and attender charges and also in awarding lesser sum under other heads. It grossly erred in not awarding any sum towards loss of earning power without considering the injuries sustained by the appellant and his earning capacity was impaired. Hence, he prays for the enhancement of the appeal.

4. On the contrary, the learned counsel for the second respondent/Insurance Company has submitted that after considering the entire oral and documentary evidence, the Tribunal has awarded a fair



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and reasonable compensation. Hence, this case do no warrant any interference of this Court.

5. Heard, the learned counsel for the appellant and the learned counsel for the second respondent. Perused the materials available on record.

6. The Tribunal, based on the oral and documentary evidences, has awarded a sum of Rs.2,58,389/- as total compensation payable by the third respondent to the claimant under the following heads:

Heads	Award Amount (Rs.)
Loss of earnings during the treatment period	50,000/-
Transport to Hospital	46,361/-
Extra Nourishment	10,000/-
Medical Expenses	63,028/-
Pain and sufferings	25,000/-
Permanent disability	64000/-
Total	Rs.2,58,389/-



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7. Considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix Rs.3000/- for each percentage of disability since the year of the accident is 2012. However, in view of the modification of Rs.2000/- to Rs.3000/- for each percentage by this Court, the disability compensation is enhanced to Rs.96,000/- by this Court instead of Rs.64,000/- as assessed by the Tribunal.

8. Perusal of records would reveal that the Tribunal has not awarded any sum under the head of attender charges. Considering the nature of injuries sustained by the appellant and that the claimant would have been taken care of by any other person during the treatment period in the Government as well as in the private hospital, this court is inclined to fix Rs.6000/- under the head of attender charges. During the treatment period, he would have taken nutritious food and hence, the sum may be enhanced to Rs.12,000/- towards Extra Nourishment.

9. Insofar as the other heads such as loss of earnings, Transport,



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medical expenses, pain and sufferings are concerned, which in the opinion of this Court, are based on evidence and records, the said sum awarded under these heads are confirmed as such. Thus, the break-up details of the modified compensation are as follows:

Heads	Award Amount (Rs.)
Loss of earnings during the treatment period	50,000/-
Transport to Hospital	46,361/-
Extra Nourishment	12,000/-
Medical Expenses	63,028/-
Pain and sufferings	25,000/-
Permanent disability	96000/-
Attender charges	6000/-
Total	Rs.2,98,389/-

10. In the result, the Civil Miscellaneous Appeal filed by the claimant/appellant is partly allowed by enhancing the total compensation from Rs.2,58,389/- to **Rs.2,98,389/-**, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of



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deposit. Since the compensation amount now awarded is **Rs.2,98,389/-** /-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced award amount.

11. The second respondent/Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited, if any, 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 as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

19.06.2023

Index : yes/No
Internet: Yes/No
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1. The Motor Accident Claims Tribunal,
Subordinate Court) Perundurai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.



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A.A.NAKKIRAN., J.
gv

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