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C.M.A.No.1182 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1182 of 2020

Punitha Parisutharaj

... Appellant

vs.

1.Arul Kumar

2.The New India Assurance Company Limited,
Rep.by its Branch Manager,
T.S.No.1817, Neela South Road,
Nagapattinam Town and District Munsifi.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Award dated 10.01.2013 in M.A.C.T.O.P.No.44 of 2012 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal.

For Appellant : Ms.G.Lavanya

For Respondents : Mr.Elaveera Ravindran [R2]

R1–Notice Served–No Appearance

JUDGMENT

Not being satisfied by the judgment and decree dated 10.01.2023, made in M.A.C.T.O.P.No.44 of 2012 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal, the appellant/claimant herein



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has preferred this appeal for enhancement of compensation.

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2. The claim petition was filed under Section 140 and 166(1) of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/- for the injury sustained by him in the road accident that occurred on 15.09.2011.

3. The Tribunal after hearing both sides' arguments and upon perusing both oral and documentary evidence, has granted compensation of Rs.63,000/- with 7.5% interest from the date of filing of petition i.e., 07.03.2012 till the date of deposit.

4. Ms.Lavanya, learned counsel for the appellant/claimant would argue that the claimant who sustained fracture over the left foot and left leg due to the accident had claimed compensation of Rs.3,00,000/-. The Tribunal awarded an amount of Rs.63,000/- which is very less. The Doctor namely PW2 assessed the disability of the appellant/claimant as 35%. Whereas the Tribunal has taken only 25%, without assigning any reason is incorrect. As the accident had taken place in the year 2011, considering the nature of injury, per percentage Rs.3,000/- may be granted. As per Ex.P11 Certificate issued by the Iron Rod Fitters Association, the appellant/claimant was earning a sum of Rs.750/- per day / Rs.22,500/-



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p.m., and the monthly income fixed by the Tribunal as Rs.3,000/- is on the lower side. It is her arguments that for calculating loss of income during the treatment period, as the appellant/claimant was at home for six months, loss of income may be awarded for the treatment period. The amount granted for Transportation, Pain and Suffering are on the lower side. The learned counsel would further contend that no amount was granted for Future Medical Expenses.

5. Per contra, the learned counsel appearing for the Insurance Company would strenuously argue that the amount granted for pain and suffering undergone by the appellant/claimant, for extra nourishment and transportation are quite reasonable. The Tribunal has reduced the disability from 35% to 25%, considering the nature of injury sustained by the appellant is reasonable and that may be confirmed and prayed to dismiss the Appeal.

6. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

7. At the outset, the manner in which the accident had taken place is not in dispute. It is the evidence of PW1, who is the injured/appellant/claimant coupled with the details found in Ex.P1-Copy of



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First Information Report registered in Crime No.122 of 2011 of Nieravy Police Station, Karaikal, it appears that on 15.09.2011, at about 8.15 p.m., while the appellant was proceeding along the Karaikal Nagore Main Road, in TVS Motor Cycle bearing Reg.No.PY-02-J-9552 at the point of Ammalchattiram in front of Ramakrishna Saw Mill, a Mahindra Maxicab (Tourist Van) bearing Reg.No.TN-51-F-0064 came in a rash and negligent manner and hit on the claimant's vehicle, thereby the appellant/claimant sustained fracture of bone on the left foot and sustained injuries over other parts of the body.

8. It is discernible from the evidence of PW1-injured and PW2-Dr.Rajagopal, who assessed the disability of the appellant/claimant coupled with the treatment records, Ex.P7 Accident Register issued by the Government General Hospital, Karaikal, Ex.P5-Followup Card of the petitioner issued by the Government Hospital, Pondicherry and Ex.P6-Out Patient Slip of the petitioner issued by the Government Hospital, Pondicherry that the appellant/claimant sustained fracture over his left foot. The Doctor, who assessed the disability of the appellant/claimant as 35% and he has stated that if physiotherapy is done there is a chance of reduction of disability by 2%. Considering the age and the oral evidence let in by the claimant side and the treatment records, this Court deems fit to



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fix the disability as 30%.

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9. The date of accident is 15.09.2011. The appellant/claimant has stated that he is a iron rod fitter in the field of building construction and was earning Rs.750/- per day and Rs.22,500/- p.m. To substantiate the same, Certificate issued by the Iron Rod Fitters Association has been marked as Ex.P11. Wherein his wage is mentioned as Rs.750/- per day and Rs.22,500/- p.m. No witness connected with the said document of the appellant, before the Tribunal.

10.As per the law laid down in ***Syed Sadiq v. United India Insurance Company Ltd.***, reported in ***2014 (1) TN MAC 459 (SC)***, the Hon'ble Supreme Court has fixed the income of a injured person aged about 24 years, who was a vegetable vendor as Rs.6,500/- per month for the accident occurred in the year 2008. Therefore, this Court deems fit to fix the monthly income of the appellant/claimant as Rs.10,000/- p.m. As the appellant had suffered fracture of bone over his left foot, as a fitter in the field of building construction, he has to stand and do the work and he would definitely have difficulties in attending his work as he done before. Considering the nature of injuries in the work of the appellant/claimant it is reasonable to grant loss of income for four months which works out to



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Rs.40,000/- (Rs.10,000/- X 4). As amount of Rs.6,000/- was already awarded by the Tribunal, in addition to the said amount a sum of Rs.34,000/- is granted under the head of loss of income during treatment period.

11. For pain and sufferings, Rs.10,000/- is granted in addition to the amount already granted by the Tribunal. It is seen from the perusal of treatment records that he had taken treatment at Government Hospital, Karaikal and Government Hospital at Pondicherry as he suffered fracture over left foot, an amount of Rs.5,000/- is granted in addition to the amount already awarded for transportation expenses. As the appellant/claimant had sustained fracture over his left foot, he would have engaged some attender during treatment period, therefore, an amount of Rs.10,000/- is granted towards attender charges.

12. The learned counsel for the appellant/claimant would argue that considering the age and nature of work attended by the claimant, per percentage Rs.3000/- be awarded. In this regard, the learned counsel for the appellant/claimant has cited the judgment of this Court in C.M.A.Nos.2724 of 2014 and 1789 of 2016 dated 26.08.2021. For the disability of 30%, Rs.3,000/- per percentage i.e., 30% X Rs.3000/- =



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Rs.90,000/- is hereby granted. An amount of Rs.25,000/- has already been awarded by the Tribunal, now Rs.65,000/- is granted in addition to the amount already awarded towards disability. In respect of other heads, the amount awarded by the Tribunal appears to be reasonable, therefore, it needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Pain and Sufferings	Rs. 25,000/-	Rs. 35,000/-	Enhanced
2	Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-	Confirmed
3	Partial Permanent Disability	Rs. 25,000/-	Rs. 90,000/-	Enhanced
4	Transportation Expenses	Rs. 2,000/-	Rs. 7,000/-	Enhanced
5	Loss of Income during treatment period	Rs. 6,000/-	Rs. 40,000/-	Enhanced
6	Attender Charges	NIL	Rs. 10,000/-	Granted
	Total	Rs.63,000/-	Rs.1,87,000/-	

13. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.63,000/-** to **Rs.1,87,000/-** which would carry interest at the rate of 7.5% per annum.

14. In the result,



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(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from
Rs.63,000/- to Rs.1,87,000/-.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.1,87,000/-**(less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.A.C.T.O.P.No.44 of 2012 on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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Index : Yes/No
Speaking / Non-speaking order
ssn



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To:

1. The Motor Accident Claims Tribunal,
District Judge) at Karaikal.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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