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C.M.A.No.4411 of 2019

IN THE HIGH OF JUDICATURE AT MADRAS

DATED :04.07.2023

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.4411 of 2019

Sheik Mohamed

... Appellant

Vs.

1. M.Vijayakumar
S/o.R.Manivelu
7, RC Complex 206-261 SG Mutt Road,
Chamaraj Pet, Bangalore – 560 018.
2. M/s. National Insurance Company Ltd.,
Branch Office at No.74-A, Paramathy Road,
Namakkal – 637 001.
rep. By Branch Manager.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 19.08.2017, made in M.C.O.P.No.90 of 2013, on the file of the Motor Accident Claims Tribunal/Principal District Court, Perambalur.



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For Appellant : Ms.L.Meena

Respondent-1 : Notice not ready
for M/s.C.Vidhusan

For Respondent -2 : Ms.R.Sreevidhya

JUDGEMENT

This Civil Miscellaneous Appeal has been directed against the judgment and decree passed by the Motor Accident Claims Tribunal/Principal District Court, Perambalur, (hereinafter, referred to as 'the Tribunal') dated 19.08.2017, made in M.C.O.P.No.90 of 2013.

2. On 11.09.2012, at about 8.30 p.m., when the appellant/claimant was riding his Motorcycle, bearing Registration No. TN-46-B-0046, along with his sister and younger brother as pillion riders from East to West direction on Perambalur to Thuraiyur Road, towards Perambalur, and when they were nearing Cremation Ground of Palayam, first respondent's Goods Vehicle (Lorry) bearing Registration No. KA-01-C -7276 came in a rash and negligent manner, and dashed against the claimant's vehicle and thus



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caused the accident. In the said accident, the claimant sustained multiple grievous injuries all over the body. Since, at the time of the accident, the injured claimant was a +2 student, aged about 22 years and was a Self employed, earning a sum of Rs.3,000/- per month, he made a claim in a sum of Rs.4,00,000/- as compensation with interest at the rate of 18% as against the owner of the offending vehicle, first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The owner of the offending Vehicle, (viz., Lorry) remained absent before the Tribunal, and hence, he was set ex parte.

4. The Claim Petition was resisted by the Insurance Company, *inter alia*, disputing the liability by contending that the accident had occurred due to the careless and negligent act of the rider of the motorcycle, as he has no knowledge to drive the vehicle in the public place and was also not possessing valid license, hence, they are not liable to pay the compensation. Further, the Insurance Company denied the age, occupation, monthly income, nature of injuries, period of treatment and medical



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expenses, as to be false. It is furthermore contended that the compensation amount and interest claimed by the claimant is excessive and exorbitant, and prayed for dismissal of the claim petition together with costs.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.Kathiravan as P.W.2 and marked 6 documents as Exs.P.1 to P.6. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Tribunal, on appreciation of both oral and documentary evidence has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Lorry, belonging to the first respondent, and the second respondent, being the Insurer of the Lorry, is liable to pay the compensation. By coming to such a conclusion, the Tribunal has made calculation under different heads and passed an award for a total sum of Rs.1,05,858/- with interest at the rate of 7.5% p.a. as compensation.



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6.1 The break up details of the compensation amount awarded by the

Tribunal are as follows:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Disability	Rs. 84,000/-
2.	Pain and Sufferings	Rs. 10,000/-
3.	Transportation	Rs. 5,000/-
4.	Extra Nourishment	Rs. 5,000/-
5.	Medical Expenses	Rs. 1,858/-
Total		Rs.1,05,858/-

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal, seeking enhancement of the compensation.

8. As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.



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9. Ms.L.Meena, learned counsel appearing for the appellant

submitted that, due to the said accident, the claimant, who is a Student, studying 12th Standard has sustained crush injury in left thigh and left leg; from right shoulder to right forearm; right leg knee; right leg foot; left leg shin portion, hip joint, etc., fracture on his right leg, apart from sustaining multiple injuries all over the body and the Doctor also advised him to take complete bed rest and not to do any work, but, the Tribunal, completely ignored the said aspect and failed to award any compensation towards loss of earning during those periods, when the claimant was unable to perform any work, as he did earlier before he met with the accident. Therefore, she prayed to award certain amount under the said head.

10. Ms.R.Sreevidhya, learned counsel appearing for the second respondent/Insurance Company fairly submitted that some reasonable amount may be awarded towards the Loss of Income.

11. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company.



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12. Keeping in view the submission made by the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company, and considering the fact that claimant is a student, studying +2 at the time of the accident, and due to the injuries sustained by him, he was not in a position to perform his work as did before, this Court is inclined to award a sum of Rs.15,000/- towards the Loss of Income. Accordingly, award of the Tribunal is enhanced from Rs.1,05,858/- to Rs.1,20,858/-. As it is seen from the records that this Appeal has been filed with a delay of 145 days, the appellant is not entitled for interest for the above said period of delay. As regards the compensation awarded by the Tribunal under other heads are concerned, the same stands confirmed by this Court.

13. In the result, the Civil Miscellaneous Appeal is partly allowed on the following terms:-

- (i) The compensation awarded by the Tribunal is enhanced from



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Rs.1,05,858/- to Rs.1,20,858/-, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(ii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, thereupon, Registry shall draft the decree.

(iii) The second respondent/National Insurance Company Ltd., Namakkal, is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this Judgement, after deducting the amount already deposited, if any. Since the appeal is filed with a delay of 145 days, second respondent/Insurance Company is exempted from payment of 7.5% interest for delayed period. It is made clear that if the second respondent/Insurance Company fails to make payment within the stipulated time, they are liable to pay interest for the delayed payment.

(iv) On such deposit being made by the Insurance Company, the



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Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

(v) However, there shall be no order as to costs.

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To

1. The Motor Accident Claims Tribunal/
(Principal District Judge) Perambalur.



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Krishnan Ramasamy,J.,
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