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CMA.No.805 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.805 of 2020

Chiranjeevi

...Appellant

Vs.

1. T.Vinayagam

(R1 set exparte by the tribunal, hence, notice maybe dispensed with)

2. The Manager,

National Insurance Co. Ltd.,

Zemith House, No.7, Umpherson Street,

Opposite to Kuralagam, Chennai – 600 108.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.957 of 2007 dated 07.02.2012 on the file of the MACT/Additional District Court, FTC III at Tiruvallur.

For Appellant : Ms.A.Sulochana

For Respondents : Mr.P.Sankaranarayanan, for R2
: R1 – Exparte



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JUDGMENT

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2. The case of the appellant is that, on 22.04.2007 at about 21.40 hours, when the appellant and one Karthick were proceeding in a Bajaj M80 bearing Regn.No.AP-26-C-1910, the lorry bearing Regn.No.TN-28-H-2019 owned by the 1st respondent insured with the 2nd respondent, driven by its driver in a rash and negligent manner dashed against the vehicle in which the appellant was traveling, as a result of which the said Karthick sustained fatal injuries all over his body and died on spot and the appellant herein sustained grievous head injuries and got admitted in the hospital. Thereby the LRs of the deceased Karthick and the appellant filed their respective claim petition and the tribunal took both the claims together and after contest, the tribunal, vide impugned judgment awarded a compensation of Rs.60,000/- in favour of the appellant. Aggrieved with the said order, the claimant had preferred this appeal seeking enhancement of compensation.



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3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent lorry, due to which one person lost his life and the appellant herein sustained grievous injuries all over his body and also lost vision in one of his eye. Though, no AR copy was available on the date of accident, however, Ex.P6, Discharge summary issued by the Tirupathi SVRRGGH Government Hospital on the next date is available in which it is mentioned that the appellant sustained laceration injury on left forehead and he was discharged on 23.04.2007 and though the eye injury sustained by the appellant is not mentioned in the said document, however, from the Neuro surgical operation chit marked as Ex.P7, it is evident that the appellant lost vision in his right eye. Further, other than the eye injury, the appellant sustained grievous head injury, for which, the PW4, Doctor assessed 25% disability, for which, necessarily the tribunal ought to have awarded compensation by applying multiplier method, as the appellant being a Savoury master by profession, is unable to continue his avocation which he was carrying on before the accident. However, the tribunal rejected the



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entire disability sustained by the appellant holding that the eye injury sustained by the appellant was not due to the accident and even prior to the accident, the appellant had lost vision in his eye and had awarded a meagre compensation of Rs.34,000/- under the head permanent disability which is not sustainable. Further, the compensation awarded by the tribunal under the other heads are also on the lower side and the same has to necessarily be enhanced.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, though the accident took place on 22.04.2007, however no AR copy is available on the said date and even in the discharge summary available for the next date, there is no mentioning with regard to the alleged eye injury sustained by the appellant. In the absence of any concrete evidence, the tribunal had rightly rejected the claim of the appellant and the tribunal, after considering all the relevant documents placed before it, had passed the present award which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.



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5. Heard counsel for the appellant as well as the 2nd respondent and perused the materials 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/claimant is with regard to the quantum of compensation awarded by the tribunal.

7. Though the appellant claimed that he sustained eye injury due to the above said accident, when the same was objected by the opposite party, it is the duty cast upon the claimant to prove his claim by examining individual witnesses and by producing relevant documents, however the claimant failed to do so. Hence in the absence of any contra evidence, the tribunal had rightly held that the no eye injury was sustained by the appellant due to the above said accident, for which no compensation can be awarded and thereby denied to award compensation for the disability in respect of the eye injury. However, the tribunal had failed to award compensation for the disability of 25% sustained by the appellant due to the



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other grievous injuries sustained by the appellant, which is perverse and only to that extent, the impugned award of the tribunal is liable to be interfered with.

8. Therefore, considering the age of the appellant and the injuries sustained by him, this Court deems it fit to award a sum of Rs.3,000/- Therefore, the compensation awarded under the head permanent disability stands modified to Rs.75,000/-. ($25 \times 3000 = 75,000$). Further a sum of Rs.9,000/-, Rs.2,000/- and Rs.1,000/- has been awarded under the head “pain and suffering”, “extra nourishment” and “transportation” respectively which are on the lower side and therefore the same has to be enhanced.

9. No compensation has been awarded under the head attender charges and therefore a sum of Rs.5,000/- has to be awarded under the said head

10. In view of the above, the compensation awarded by the Tribunal is modified as under :-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning	9,000/-	9,000/-
Transportation	1,000/-	2,000/- (enhanced)
Extra nourishment	2,000/-	5,000/- (enhanced)
Pain and suffering	9,000/-	25,000/- (enhanced)
Medical expenses	5,000/-	5,000/-
Attender charges	-	5,000/-
Permanent Disability	34,000/-	75,000/- (enhanced)
Total	Rs.60,000/-	Rs.1,26,000/-

11. 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.60,000/-** to **Rs.1,26,000/-**. The 2nd respondent-insurance company is directed to deposit the above said amount awarded by this Court to the credit of MCOP.No.957 of 2007 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



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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.

27.11.2023

skt

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

Copy to:

1. The MACT/Additional District Court, FTC III, Tiruvallur.
2. The Section Officer, VR Section, Madras High Court.



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M.DHANDAPANI., J.

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