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CMA No. 2727 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2727 of 2022

Umapathy

... Appellant

Versus

1.D. Daniel Rajan

2.The Manager,
Reliance General Insurance Co.Ltd.,
“Heavitree” unit No.1, 3rd floor, No. 23,
Sputtank road, Chetpet, Chennai – 31.

(The first respondent have been called absent,
set exparte by MACT/CJM at Tiruvallur; Hence,
notice may be dispensed with in this petition)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation against the Judgment and Decree dated 31.01.2013 made in M.C.O.P. No. 912 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruvallur.

For Appellants : Mr. M. Lokesh.

For Respondents : Mr. P. Suresh Srinivasan for R2.



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R1 - Exparte.

J U D G M E N T

The appeal has been filed by the appellant challenging the award passed by the Tribunal in M.C.O.P. No. 912 of 2009 dated 31.01.2013.

2.The appellant had filed a claim petition before the Tribunal stating that on 14.09.2007, while the appellant was going towards Tiruttani in a motor cycle bearing Registration No. TN 20 AC 6130 as a pillion rider near Meera theatre, Tata van bearing Registration No. TN 51 Z 4345 belonging to the first respondent driven by its driver in a rash and negligent manner on the opposite direction, dashed the appellant, as a result of which the appellant sustained grievous injuries. Thus, the appellant filed claim petition seeking compensation.

3.The second respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the rash and negligent riding by the rider of the motorcycle; that there is a collision between two vehicles; that since the accident is head on collision, contributory negligence has to be fixed on the appellant; that the claim petition is bad for non-joinder of necessary parties; that in any



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case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

4.The first respondent remained exparte before the Tribunal.

5.The appellant examined three witnesses as PW1 to PW3 on their side and marked Ex.P.1 to Ex.P.7. On the side of the second respondent, RW1 was examined and Ex.R.1 to Ex.R.4 were marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the negligence of the driver of the Tata van belonging to the first respondent and directed the respondents to pay a sum of Rs.1,43,700/- as compensation to the appellant. Aggrieved by the said award, the appellant has preferred the instant appeal seeking enhancement of compensation.

7.The learned counsel for the appellant submitted that though the appellant had examined the doctor as PW2 who had issued Ex.P.3, disability certificate to show that the appellant suffered 50% permanent disability, the Tribunal had not awarded any compensation under the



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head partial permanent disability. The learned counsel further submitted that no amount has been awarded under the head attendant charges and further, fairly submitted that the award of compensation under the other heads are reasonable and prayed for the compensation towards disability and attendant charges.

8.The first respondent remained exparte before the Tribunal and the learned counsel for the appellant has sought permission of this Court to dispense with the notice to the first respondent. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent submitted that the appellant was not examined by the Medical Board. PW2 is a private doctor and hence, the Tribunal had not accepted the disability certificate issued by PW2. Therefore, the Tribunal was right in not awarding compensation under the head disability. Hence, no interference is called for and prayed for dismissal of the appeal.

10.The only question that arise for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and



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reasonable.

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11.The Tribunal had not awarded any compensation under the head disability. The appellant had marked Ex.P.2, O.P. sheet issued to him by the Government Hospital, Chennai. Ex.P.2 shows that the appellant had suffered fracture in his right leg. PW2, doctor had also issued a certificate stating that the appellant had suffered fracture in the right leg below the ankle. However, PW2 had assessed the disability at 50%. Considering the nature of injuries and the period of treatment taken by the appellant, this Court is of the view that the assessment of disability made by PW2 is on the higher side. In the facts and circumstances of this case, this Court is of the view that it would be just and reasonable to fix the disability at 30%, having regard to Ex.P.2 and the evidence of PW2, doctor. The appellant is entitled to Rs.2,000/- per percentage of disability, since the accident took place in the year 2007. Thus, the appellant is entitled to Rs.60,000/- (Rs.2000 X 30) under the head disability. Since the appellant took treatment from 14.09.2007 to 13.10.2007, the appellant is entitled to a sum of Rs.7,500/- towards attendant charges. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	23,700	23,700	Confirmed
2.	Transport charges	5,000	5,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Pain and sufferings	1,00,000	1,00,000	Confirmed
5.	Damages to clothes	5,000	5,000	Confirmed
6.	Disability	---	60,000	Granted
7.	Attendant Charges	---	7,500	Granted
	Total	1,43,700	2,11,200	Enhanced by Rs.67,500/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,43,700/- is hereby enhanced to Rs.2,11,200/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondents are directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such



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deposit, the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

16.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Tiruvallur.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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