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C.M.A.No392 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

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THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.392 of 2019

Murali

.. Appellant

Vs.

1. Prabakaran

2. R.K.Mohan

3. United India Insurance Co.Ltd.,
represented by its Branch Manager,
Branch Office,
No.2, Church Street,
Karaikal.

.. Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award insofar as it relates to the quantum and enhance the quantum of compensation from Rs.1,30,000/- to Rs.3,00,000/- payable by the respondents to the appellant by suitably enhancing the compensation by award dated 09.07.2015 in M.A.C.T.O.P.No.41 of 2014, on the file of the Motor Accident Claims Tribunal (District Judge) at Karaikal.

For Appellant : Mr.L.Poovendra Perumal
for M/s Sai Bharath and Ilan



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For R1 and R2 : No appearance
For R3 : Mr.S.Arunkumar

JUDGMENT

Not being satisfied by the award passed by the Motor Accident Claims Tribunal District Judge, Karaikal in M.A.C.T.O.P.No.41 of 2014 on 09.07.2015, the appellant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 140 r/w 166(1)(a) of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- together with interest.

3. The learned Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an award for an amount of Rs.1,30,000/-, along with interest at the rate of 7.5% per annum from the date of the petition (i.e.27.01.2014) till the date of deposit.

4. Mr.L.Poovendra Perumal, the learned counsel for the appellant would strenuously argue that the Doctor (P.W.2) assessed the disability of the



injured as 40%. The Tribunal has awarded Rs.2000/- per percentage and per percentage Rs.3000/- may be awarded. He would further contend that the injured was in hospital as an inpatient from 24.10.2013 to 30.10.2013. He would further submit that for transport expenses and extra nourishment the amount awarded is insufficient. No amount was awarded for attender charges, for loss of amenities and for future medical expenses. To buttress his argument, he cited of Judgment of the Hon'ble Supreme Court in **Syed Sadiq Vs United India Insurance Company** reported in **2014 (1) TANMAC 459 (SC)**, wherein, the monthly income of an injured vegetable vendor, aged 24 years was fixed at Rs.6500/- per month for the accident that occurred in the year 2008 and as such the monthly income fixed for the appellant may be enhanced. The Tribunal has granted loss of income only for three months and that may be enhanced to six months.

5. Per contra, Mr.S.Arunkumar, learned counsel for the third respondent – Insurance Company would vehemently argue that the Doctor who treated the injured was not examined. The Tribunal has taken disability as 30% is proper. It is the further argument of the learned counsel for the third respondent



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that as far as the income, no document was filed. To claim future medical expenses, further treatment record was also not filed. Hence, the appellant is not entitled to claim the same. He further contended that the tribunal after taking into consideration of oral and documentary evidence has passed an award for a sum of Rs.1,30,000/- is a well reasoned order. Hence, the same needs no interference.

6. Heard the rival submissions of learned counsel for the appellant and the learned counsel for the third respondent – Insurance Company and perused the materials on record.

7. It is seen from the evidence of P.W.1/injured that on 24.10.2013, at about 10.30 a.m., when he was riding his TVS Scooty Pep motor cycle bearing Registration No.PY 02 D 3773 along Nagore - Karaikal Main Road, proceeding from south to north direction, at the point of S.S.N.Petrol Bunk, Keezha Vanjore, Thirumalairayanpattinam, the rider of Hero Honda Splendor Plus motor cycle bearing Registration No.PY 02 C 5644 came in a rash and negligent manner from the same direction and suddenly turned without any



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signal or indicator, dashed the injured from behind. Due to the said impact, he sustained serious injuries, is not in dispute.

8. It is the further evidence of P.W.1/injured that he suffered head injury resulted in epidural haemorrhage and linear fracture in occipital bone extending into floor of posterior fossa on right side. He had taken initial treatment at General Hospital, Karaikal as per Ex.P8 Accident Register. Ex.P2 and Ex.P8 are the treatment records issued by the Meenakshi Hospital, Thanjavur and General Hospital, Karaikal respectively which confirms the fact that he had taken treatment from 24.10.2013 to 30.10.2013. As regards the assessment of disability, Dr.Swaminathan was examined as P.W.2. He would depose that considering the age of the appellant, there is a possibility for reducing the disabilities by way of doing physiotherapy and on medication.

9. It is seen from the disability certificate Ex.P12, it appears that P.W.2 has given break up figures, as to how he has arrived at 40% of disability. Though the Doctor is expected to assess the disability based on the physical disabilities, P.W.2 has assessed based on the post effects of the injured.



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Therefore, the disability was taken as 30% by the Tribunal cannot be found fault with. The year of the accident is 2013. It was the evidence of the injured P.W.1 as well as P.W.2 that due to the accident, he suffered from head ache, giddiness and finding difficulties doing hard work. Therefore, this Court deems fit to grant a sum of Rs.30,000/- in addition to the amount which was already granted for the disability suffered.

10. As regards, the income of the claimant, it was stated that he was doing real estate business and supplying water, thereby he was earning Rs.10,000/- per month. As there was no documents filed to substantiate the same, the Tribunal has fixed the income of the appellant at Rs.4,500/- per month.

11. As regards, the fixing of income in motor accident cases, the Hon'ble Supreme Court in *Syed Sadiq Vs United India Insurance Company* reported in 2014 (1) TANMAC 459 (SC), has fixed the income of an injured vegetable vendor, aged 24 years at Rs.6,500/- per month for the accident that occurred on 2002. The accident has taken place in the year 2013. Therefore, this Court deems fit to fix the income of the



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appellant at Rs.9000/- per month.

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12. Taking into account of the nature of injuries sustained by the appellant, he is entitled for loss of income for five months, which is re-worked as Rs.9000/- ~~5~~ Rs.45,000/-.

13. A perusal of the documents marked, it appears that no further treatment record was marked to prove the fact that he took further treatment. Therefore, in view of the same, no amount is granted for future medical expenses. Considering the age and nature of injuries sustained by the appellant, the appellant is entitled for Rs.10,000/- in addition to the amount already granted for Pain and Suffering. For Transport expenses and for extra nourishment, an amount of Rs.14,000/- is granted in addition to the amount already granted by the Tribunal.

14. In all other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference.

15. Based on the aforesaid details the compensation awarded by the



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Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	60,000/-	90,000/-	Enhanced
2.	Pain and Suffering	10,000/-	20,000/-	Enhanced
3.	Towards Transport expenses and extra nourishment	6,000/-	20,000/-	Enhanced
4.	Medical Expenses	40,130/-	40,130/-	Confirmed
5.	Loss of Income for the treatment period	13,500/-	45,000/-	Enhanced
	Total	Rs.1,30,000/-	Rs.2,15,130/-	Enhanced by Rs.85,130/-

16. In the result,

16(i). This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,30,000/- is hereby enhanced to Rs.2,15,130/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

16(ii). The third respondent-Insurance Company is 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of



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M.A.C.T.O.P.No.41 of 2014, dated 09.07.2015 on the file of the Motor Accident

Claims Tribunal District Judge, Karaikal.

16(iii). On such deposit, the appellant / claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn, by filing necessary cheque application before the Tribunal. No costs.

05.07.2023

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Index : Yes / No
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R.KALAIMATHI. J.

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To

- 1.The Motor Accident Claims Tribunal (District Judge)at Karaikal.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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