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CMA.No.1123 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1123 of 2019

M.Mohan

.. Appellant

Vs.

1.R.Kirubakaran

2.The Manager,
Oriental Insurance Company Ltd.,
Jambubala Complex, Arcot Road,
Vellore.

(1st respondent was set exparte before the Tribunal.
Hence notice may be dispensed with)

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 17.12.2012 made in M.C.O.P.No.273 of 2010 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court) Vellore.

For Appellant : Mr.M.Sivakumar

For Respondents : Mr.Vinodh for R2

for Mr.Elveera Ravindran

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 17.12.2012 made in M.C.O.P.No.273 of 2010 on the file of the Motor Accidents Claims



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Tribunal/Chief Judicial Magistrate Court) Vellore.

WEB COPY 2. The case of the claimant / appellant is that on 16.02.2010 at about 21.15 hours, while the appellant was going on a moped bearing Regn.No.TN-23-X-8083 on MBT Road, Muthukadai, near Balaj Auto Spares shop, Ranipet, an Ape Auto bearing Regn.No.TN-20-AV-3204 owned by the first respondent and driven by its driver in a rash and negligent manner with uncontrollable speed, came from the opposite side and hit on the claimant. Due to the said impact, the claimant sustained grievous injuries with multiple fractures. The claimant was taken to S.M.H.Hospital, Ranipet, for treatment and took further treatment at CMC Vellore. Claiming that the driver of the Ape auto is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.3,00,000/-

3. The Tribunal, based on the oral and documentary evidences has observed that the driver of the first respondent is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.26,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved against the same, the claimant /



appellant is before this Court.

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4. The learned counsel for the claimant / appellant has submitted that the decree and judgment of the Tribunal are contrary to law, the weight of evidence and probabilities of the case. It ought to have awarded just compensation considering the grievous injuries, period of treatment and nature of employment. It has erred in reducing the disability from 40% to 7% and awarding Rs.14,000/- only towards disability, Rs.10,000/- towards pain and sufferings, Rs.2000/- towards Transport which are on the lower side. It has also erred in not granting any amount towards extra nourishment, loss of income during treatment period, attender charges and loss of amenities. In any event, the Tribunal erred in awarding compensation at Rs.26,000/- as against the claim of Rs.3,00,000/-. Hence, he prays for enhancement of the Award amount.

5. Before the Tribunal, the Appellant/claimant has examined two witnesses and marked PW1 and PW2 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second respondent/Insurance Company, two witnesses were examined as RW1 and RW2 and filed six documents which were marked as Ex.R1 to Ex.R6.



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WEB COPY 6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss the petition.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. Based on the evidences of P.W.1 and PW2 and perusing the exhibits in Ex.P1/FIR copy and Ex.P3/Copy of Insurance Policy, the Tribunal has fastened the liability on the driver of the Ape Auto bearing Regn.No.TN-20-AV-3204.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that he was engaged in the work of Sponge cutting and was earning Rs.7,000/- per month. Though the PW2/Doctor has assessed the disability of the claimant at 40% in Ex.P2, the Tribunal has



wrongly fixed disability of the claimant at 7% and awarded only Rs.14000/-

towards disability. From the records, it is seen that he has sustained head injury of fracture of bone and undergone surgery for disorder of nervous of the left little finger and a wire was fixed to control the sensibility of the appellant and multiple injuries all over the body and hence the same needs revisit. This court is of the considered opinion that since the year of accident is 2010, Rs.3000/- is the correct assessment for each percentage and also the disability has to be taken at 20% and thus fixed a sum of Rs.60,000/- (3000 x 20%) towards disability. During the said treatment period, he has incurred transport expenses and the same may be fixed at Rs.5,000/- instead of Rs.2,000/- as assessed by the Tribunal.

10. On perusal of records, it is seen that the Tribunal has not awarded any amount under the heads of Extra Nourishment, Attender charges and loss of income. Due to the grievous injuries sustained by the appellant/claimant, he had taken the help of attender atleast for two months and hence the award granted under the attender charges is fixed at Rs.5,000/-(2500 x 2). Similarly, it would be appropriate to fix a sum of Rs.5,000/- towards Extra Nourishment. This Court is of the considered view that due to the nature of injuries sustained by the appellant and period



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treatment given in the hospital as in-patient, this court is inclined to take two months for calculation of loss of income and thus arrived at Rs.14,000/- (7000 x 2 months).

11. Insofar as the other head such as pain and sufferings, the assessment of the compensation awarded by the Tribunal is a just compensation and it does not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	14,000/- (7% x 2000)	60,000/- (20% x 3000)
Pain & Sufferings	+10,000/-	10,000/-
Transport	2,000/-	5,000/-
Extra Nourishment	----	5,000/-
Attender charges	----	5,000/-
Loss of income	----	14,000/-
Total	26,000/-	99,000

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is



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partly allowed, by enhancing the total amount of compensation from Rs.26,000/- to Rs.99,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) It is made clear that the claimant is not entitled for interest for the condoned delay period of 853 days.

(c) The second respondent/Insurance Company is directed to deposit the enhanced award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.273 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(d) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

No costs.

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Index : Yes/No

Internet : Yes/No

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A.A.NAKKIRAN, J

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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court) Vellore.

2. The Section Officer,
V.R.Section,
High Court, Madras.

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