



C.M.A.No.1828 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1828 of 2019

T.Rajendran

...Appellant

Vs.

1. Ceetee Nachi Textile Pvt. Ltd.,
Poonimangadu Village,
Thiruthani Village,
Thiruvallur – 631 212.

2. Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, College Road,
Nungambakkam, Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 05.11.2016 made in MCOP.No.5191 of 2011 on the file of the II Small Causes Judge, [Motor Accident Claims Tribunal], Chennai.

For Appellant : Mr.A.Panneerselvam

For Respondents : M/s.D.Veda, for R1
: Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates, for R2



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JUDGEMENT

Aggrieved by the Judgement and Decree passed by the II Small Causes Judge, [Motor Accident Claims Tribunal], Chennai in MCOP.No.5191 of 2011 dated 05.11.2016, the claimant has come up with this Appeal.

2. The case of the appellant is that, on 04.02.2009 at about 04.30 pm., when the appellant was riding his motor cycle bearing Regn.No. TN-10-W-1087 in Nagari to Tiruthani Road, near Muneppa Meidu Kandiga cross, a Swaraj Mazda van bearing Reg.No.TN-20-AD-8579, owned by the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner came with high speed and dashed the appellant, due to which, the appellant sustained grievous injuries all over his body. Thereby, the appellant filed a claim petition claiming a compensation of Rs.15,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.6,80,000/-. Aggrieved by the said order, the appellant had come up with this appeal seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the above said



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accident happened solely due to the rash and negligent driving of the driver of the 1st respondent vehicle and at the time of accident, the appellant was aged about 28 years and he was the Proprietor of “Favorite foos” and was earning a sum of Rs.35,000/- per month and though the appellant marked Ex.P10, Income Tax return to show his annual income, however, without considering the same, the tribunal had taken the monthly income of the appellant as Rs.12,500/-, which is not sustainable. Further, though the P.W2, the Doctor who treated the appellant issued a Disability Certificate, marked as Ex.P16 holding that the appellant sustained 80% disability, the Tribunal taken into account only 70% and had awarded a sum of Rs.2,10,000/- under the head “Disability”, without considering the fact that the disability sustained by the appellant is of permanent in nature and due to which he is unable to continue his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced and the tribunal ought to have adopted multiplier method instead of percentage method. Further, the compensation awarded by the tribunal under the other heads are also on the lower side, which has to necessarily be enhanced.

4. Per contra, the learned counsel appearing for the respective



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respondents submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel on either side and perused the material documents 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 is with regard to the quantum of compensation awarded. It is claimed by the appellant that, at the time of accident, the appellant was aged about 28 years and was the Proprietor of “Favorite foods” and was earning a sum of Rs.35,000/- per month, however, the tribunal had taken the monthly income of the appellant as Rs.12,500/- alone and though the appellant sustained 80% functional disability, the tribunal had failed to adopt multiplier method.



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7. A perusal of the claim petition and the impugned award reveals that, the appellant had claimed that he was earning a sum of Rs.35,000/- per month, however, as per Ex.P10 Income Tax returns, the gross annual income of the appellant is mentioned as Rs.1,50,320/- and except the said documents, no other documents were filed by the appellant to establish his income. In the absence of any such proof, the tribunal had rightly fixed the notional income of the appellant as Rs.12,500/-, in which this Court does not find any fault with.

8. Insofar as the disability sustained by the appellant is concerned, though the learned counsel for the appellant claims that the appellant sustained functional disability, however, after carefully perusing all the documents placed before it, particularly the Exs.P4, 18 & 19 and the nature of the job carried out by the appellant, the tribunal held that the appellant did not suffer any functional disability and thereby adopted percentage method instead of multiplier method, in which, this Court does not find any fault with.

9. Further, it is to be pointed out that the percentage of disability



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varies from doctor to doctor and in the case on hand, though the P.W2, Doctor assessed 80% disability, the tribunal has taken into consideration only 70%. Hence, considering the deposition of PW2 and the Exs.P18 & 19, Disability certificates and also taking into account the age of the appellant and the nature of injuries suffered by him, this Court fixes the disability sustained by the appellant at the rate of 75%. Therefore, the amount under the head disability stands enhanced to a sum of Rs.2,25,000/- ($75 \times \text{Rs.3,000/-} = \text{Rs.2,25,000/-}$). Further, the Tribunal has awarded a sum of Rs.50,000/- and Rs.20,000/- under the heads “Transportation, nourishing food and miscellaneous expenditure” and “attender charges” respectively. However, considering the fact that the appellant is continuously taking treatment and is unable to do his work without the help of others, this Court is of the view that the compensation awarded under the said heads are meager and necessarily the same has to be enhanced.

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said



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heads.

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11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Transportation, nourishing food and miscellaneous expenditure	50,000/-	1,00,000/-
Medical expenses	3,00,000/-	3,00,000/-
Attender charges	20,000/-	50,000/-
Disability	2,10,000/-	2,25,000/-
Damages for Pain, suffering and mental agony	50,000/-	50,000/-
Loss of earning during the period of treatment	25,000/-	25,000/-
Loss of amenities	25,000/-	25,000/-
Total	Rs.6,80,000/-	Rs.7,75,000/-

12. 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.6,80,000/-** to **Rs.7,75,000/-**. The 2nd respondent-insurance company is directed to deposit the above said amount awarded by this Court to the credit of MCOP.No.5191 of 2011 along with interest at the rate of 7.5% per annum from the date of claim



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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 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. There shall be no order as to costs in the present appeal.

07.11.2023

skt

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

To

1.The Motor Accident Claims Tribunal/II Small Causes Judge,
Chennai.

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



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M.DHANDAPANI, J.

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