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C.M.A.No.2482 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

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

C.M.A.No.2482 of 2018

M.Santhanakrishnan

... Appellant

Vs.

1. S.Martin

2. ICICI Lombard General Insurance Company Ltd.,

No.84/85, Walltax Road,

Chennai 79.

...

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31.07.2013 passed in M.C.O.P.No.2018 of 2011 on the file of Motor Accident Claims Tribunal cum III Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Ravikumar

For R1 : No appearance

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

Challenging the quantum of compensation awarded by the



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Motor Accident Claims Tribunal cum III Judge, Small Causes Court, Chennai in M.C.O.P.No.2018 of 2011, dated 31.07.2013, the appellant/claimant has filed the present appeal.

2. The case of the appellant/claimant is that, on 30.05.2011 at about 8.30 hours, while the appellant/claimant was driving a auto rickshaw bearing Reg.No.TN-05-D-5991, he was hit by a car bearing Reg.No.TN-06-4086, which was driven by its driver in a rash and negligent manner. Due to the impact of the said accident, the appellant/claimant sustained grievous injuries all over his body. Hence, the appellant made a Claim Petition before the Tribunal, seeking a sum of Rs.6,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.3,82,500/- towards compensation to the appellant. Being not satisfied with the same, the appellant/claimant has filed the present appeal.

4. The learned counsel appearing for the appellant submitted



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that, though the Doctor has assessed the disability of the injured at 65%, the Tribunal has only taken 60% disability and fixed a sum of Rs.2,000/- per percentage and arrived at Rs.1,20,000/- towards disability, which is on the lower side and the same needs to be modified by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. Though notice was served on the first respondent, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

6. The learned counsel appearing for the second respondent/Insurance Company would submit that, the amount awarded by the Tribunal under all heads are just and reasonable, which does not requires any interference of this Court.

7. Heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing on behalf of the



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second respondent/Insurance company and perused the materials available on record.

8. 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. In the present case, the compensation awarded under the head permanent disability arrived at Rs.1,20,000/-, which appears to be low. Further, on perusal of the records, it appears that, due to the injuries sustained by the claimant, the claimant right hip movement was restricted, he cannot able to sit on the floor. Under these circumstances, at the relevant point of time, the Tribunal ought to have fixed a higher amount of compensation towards “disability” and as the percentage of disability varies from Doctor to Doctor this Court is inclined to fix 60% disability. Therefore, this Court feels that it would be appropriate to fix a sum of Rs.3,000/- per percentage, which would be just and reasonable and thus the amount towards “disability” is modified and enhanced to a sum of Rs.1,80,000/- ($60 \times 3,000/- = 1,80,000/-$).



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9. Insofar as the compensation awarded by the Tribunal under other heads are concerned, this Court finds that the same are just and proper and are hereby confirmed.

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

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of Income	22,500/-	22,500/-
2	Transport to Hospital	5,000/-	5,000/-
3	Extra nourishment	5,000/-	5,000/-
4	Medical expenses	2,00,000/-	2,00,000/-
5	Pain and suffering	30,000/-	30,000/-
6	Permanent disability	1,20,000/-	1,80,000/- (enhanced)
	Total	3,82,500/-	4,42,500/-

11. Accordingly, this appeal is partly allowed and the compensation amount by the Tribunal is enhanced from **Rs.3,82,500/-** to **Rs.4,42,500/-** and the second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.2018 of 2011 along with interest at the rate of



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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 six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant is directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking order / Non-speaking order

Netrual Citation Case : Yes / No

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To

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- 1.Motor Accident Claims Tribunal cum
III Judge, Small Causes Court, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

M.DHANDAPANI, J.



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C.M.P.No.8819 of 2023

in

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M.DHANDAPANI, J.



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This Civil Miscellaneous Appeal

has been filed to set aside the dismissal order of this Court dated 16.02.2023 and to restore the above appeal in C.M.A.No.2482 of 2018.

2. Heard the learned counsel for the appellant/petitioner and respondents.

3. The learned counsel for the second respondent has no objection for this petition being allowed.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is allowed.

21.11.2023

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