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C.M.A.No.2247 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.02.2023

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2247 of 2018

Ramalingam

... Appellant/Petitioner

vs.

1. Chandrakala

2. HDFC ERGO General Insurance Company Ltd.,
Corporate Office
Leela Business Park
Andheri Kural Road,
Andheri (E)
Mumbai – 400 059.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 21.02.2018 made in M.C.O.P.No.2626 of 2014 on the file of the Motor Accidents Claims Tribunal (The Special Subordinate Judge/Dharmapuri).

For Appellant : Mr.R.Arun Dattan

For Respondents : for Ms.M.Sudha
: Ex Parte - R1
: No appearance - R2

J U D G M E N T



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This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.02.2018 in M.C.O.P.No.2626 of 2014 passed by the Motor Accidents Claims Tribunal (The Special Subordinate Judge/Dharmapuri).

2. It is the case of the claimant/appellant that on 14.05.2013 at 10.30 p.m., when the claimant was driving the light goods vehicle Ashok Leyland dost LS BS III bearing Registration No.TN-29-AL-9698 from Kottappatti to Harur, a lorry bearing Regn.No.TN-52-C-1379 belonging to the first respondent and insured with the 2nd respondent coming from the opposite direction towards Bairanaikanpatti to Theerthamalai Road near Ivannampallam, drove by its driver in a rash and negligent manner, dashed on the light goods vehicle, due to which, the appellant sustained grievous and multiple injuries all over the body. Since the respondents are vicariously liable to pay compensation, the claimant has preferred the claim petition before the Tribunal. The Tribunal, after framing issues and recording evidence, has fastened the liability on the 2nd respondent/Insurance Company and ultimately quantified the compensation



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in the following manner:-

Sl.No.	Head	Amount in Rs.
1.	25% Permanent Disability	Rs.75,000/-
2.	Pain & Suffering	Rs. 25,000/-
3.	Attender Charges	Rs. 5,000/-
4.	Extra Nourishment & damages to articles	Rs. 10,000/-
5.	Medical & Transport Expenses	Rs. 87,169/-
6.	Loss of income for 3 months	Rs.30,000/-
	Total	Rs.2,32,169/-

3. Heard the learned counsel for the appellant and perused the materials available on record.

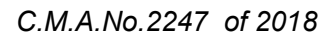
4. The first respondent was set exparte before the Tribunal. There is no representation for the second respondent.

5. The learned counsel for the appellant/claimant has submitted that the Tribunal has failed to award compensation in a proper perspective; He further submitted that the appellant aged about 37 years at the time of accident and he was a self employed person and he was earning not less



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than Rs.30000/- at the time of accident. But the Tribunal has awarded only Rs.30000/- towards loss of earning. The Tribunal has not consider the treatment undergone by the appellant and not awarded any amount towards the future medical expenses. The appellant suffered injuries on the eyebrow, right side of the knee and right hip, besides other severe injuries. He had taken treatment as in-patient at Dharmapuri Government Medical College Hospital from 14.05.2013 to 17.05.2013. Further, Ex.P8 and Ex.P9 would reveal that the appellant had undergone various treatments at Kanaga Medical Centre & Hospital, Coimbatore, for the complicated fracture on the right hip. Even after continuous treatment, he is not able to do his normal avocation for his livelihood. He further submitted that although the disability has been assessed as 25%, the Tribunal did not award any amount towards compensation for continuing disability. The lower court grossly erred in determining compensation under the heads of 'extra nourishment & damages to articles', 'Transportation to hospital', 'loss of earning' and 'pain and sufferings' by awarding very meager amount on the said heads though the appellant has marked the documents such as Ex.P1 to Ex.P16 to substantiate his claim. It failed to award any compensation under the head



6. Per contra, the learned counsel for the 2nd respondent/Insurance Company has submitted that the Tribunal has taken each and every aspect into consideration and has awarded the just compensation which does not require any interference by this Court; in fact, the Tribunal has taken note of the evidence and documents on record and ultimately arrived at the compensation, which is perfectly valid in the eye of law. Hence, he prays to dismiss the appeal.

7. On the side of the appellant, appellant himself was examined as PW1 and sixteen exhibits were marked as Ex.P1 to Ex.P16. Neither witness was examined and nor documents were marked on the side of the second respondent.

8. A perusal of the award of the Tribunal would go to show that



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the Tribunal has analysed the evidences of Ex.P1/FIR, Ex.P4/driving license of the driver of the 1st respondent and Ex.P15/Accident Register, proves that the driver of the 1st respondent has caused the accident. Since the 1st respondent has insured with the 2nd respondent, the Insurance Company is liable to pay the compensation to the appellant. Ex.P2, Ex.P7 to Ex.P11, Ex.P14 and Ex.P16 would go to show that the claimant has taken treatment in various hospitals and he is suffering 25% of permanent disability. The Tribunal has rightly awarded Rs.30,000/- under the head, 'loss of earning'.

9. It is borne out from the evidences and it is observed by the Tribunal that the Doctor has assessed the disability at 25%. It is not in dispute that the claimant was aged about 37 years and he was a self employed person earning Rs.30000/- p.m at the time of accident. Due to the accident, the appellant sustained grievous injuries such as fracture in the right hip. Ex.P8 and Ex.P9 would reveal that he underwent various treatment and still he is under continuous follow up treatment. Due to the accident, there was also damages to other articles. When that be so, the amount awarded towards Extra Nourishment & damages to other articles



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and Pain and suffering needs revisit. The other heads of compensation awarded by the Tribunal are reasonably quantified and hence, they are confirmed as such.

10. With the sufferings stated by the Doctor in his evidence, the appellant has to lead his entire life. Hence, the amount awarded by the Tribunal under the head 'Pain & Suffering' at Rs.25,000/- is enhanced to Rs.50,000/-; the amount awarded by the Tribunal under the heads 'Extra Nourishment & damages to articles' at Rs.10,000/- is enhanced to Rs.25,000/-(20000 + 5000).

11.The details of the modified compensation are as follows:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	25% Permanent Disability	Rs.75,000/-
2.	Pain & Suffering	Rs. 50,000/-
3.	Attender Charges	Rs. 5,000/-
4.	Extra Nourishment & damages to articles(20000 + 5000)	Rs. 25,000/-
5.	Medical & Transport Expenses	Rs. 87,169/-
6.	Loss of income for 3 months	Rs.30,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
	Total	Rs.2,72,169/-

12. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

13. Thus the appellant/claimant is entitled to the modified compensation of Rs.2,72,169/- with interest at the rate of 7.5% per annum from the date of claim petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount. The 2nd respondent / Insurance Company is directed to deposit the modified amount of compensation, as ordered above, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

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Index : yes/no
Internet : yes/No
gv



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To

1. The Motor Accident Claims Tribunal
(The Special Subordinate Judge/Dharmapuri).
2. The Section Officer,
V.R.Section, High Court, Madras.



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A.A.NAKKIRAN.,J

gv

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