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CMA.No.3770 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3770 of 2019

R.Periyasamy

... Appellant

Vs.

1.S.Rajasingh

2.M/s.National Insurance Co.Ltd.

Rep by its Divisional Office – 1,

L.R.N.Complex, Salem – 7.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.12.2017 made in M.C.O.P.No.794 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub- Court-I, Salem.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.D.Bhaskaran for R2

Dispensed with - R1

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 07.12.2017 in M.C.O.P.No.794 of 2015 passed by the Motor Accidents Claims Tribunal, (Special Sub-Court-I,



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2. The case of the appellant/claimant is that on 10.01.2015 at 10.10 p.m., while the appellant was riding his motor cycle bearing Regn.No.TN-34-Q-4177 on the side of the S.P.B.Mill to Thiruchendgode main road, in SPB colony, opposite to Church, the rider of the motor cycle bearing Regn.No.TN-34-M-3084 drove it in a rash and negligent manner from the opposite direction to the appellant and dashed against the appellant. Due to the said impact, the appellant sustained crush injury, fracture on right thigh and grievous injuries all over the body. Claiming that the appellant was a Worker in Paper mills and earning about Rs.20,000/- per month and the rider of the motor cycle bearing Regn.No.TN-34-M-3084 is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.13,00,000/-.

3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.



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4. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.3,63,337/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Earning capacity	2,16,000/-
Pain and sufferings	25,000/-
Transport and other expenses	10,000/-
Medical Expenses	62,337/-
Extra Nourishment	20,000/-
Loss of amenities	30,000/-
Total	3,63,337/-

5. The Appellant/claimant has met with an accident on 10.01.2015 and sustained permanent disability to right leg and disfiguration in right leg, amputation of right leg great toe and fracture on right femur and injuries all over the body. As a result of which, accident caused by the vehicle owned by the first respondent. He preferred a claim before the Motor Accidents Claims Tribunal



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seeking compensation for the injuries sustained by him. The Motor Accident Claims Tribunal had directed the respondents 1 and 2 to pay the aforesaid compensation jointly and severally to the Appellant/claimant.

6. Before the Tribunal, on the side of the appellant/claimant, two witnesses were examined as PW1 and PW2 and 10 exhibits were marked as Ex.P1 to Ex.P10. On the side of the second respondent, neither witness was examined nor document filed.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. The learned counsel appearing on behalf of the appellant mainly contended that the Tribunal went wrong in not awarding any amount under the head of disability. The Tribunal erred in fixing 20% loss of earning capacity. It has erred in fixing income of the appellant Rs.6000/- per month. It ought to have fixing the income of the appellant as just one considering the appellant, occupation, income and future prospectus. It failed to take future prospects income



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of the appellant. It erred in not awarding any amount towards future medical expenses. It ought to have award just compensation under the head of future medical expenses considering grievous injuries, surgeries and vegetable position consequently bedridden. It went wrong in not awarding any amount towards attender charges. It also erred in awarding compensation under various heads. Hence, he seeks enhancement of the appeal

9. The learned counsel for the second respondent denies the averments with regard to the age, occupation and monthly income of the appellant and put the appellant to strict proof of the same. He further submitted that the rider of the motor cycle bearing Regn.No.TN-34-M-3084 is not responsible for the accident. He further submitted that the total compensation claimed by the appellant under various heads is highly excessive and baseless and only to boost up the claim. Hence, he prays for dismissal of the appeal.

10. The accident occurred on 10.01.2015 at 10.10 p.m., on the side of the S.P.B.Mill to Thiruchendode main road, in SPB colony, opposite to Church. Due to the accident, the appellant/claimant sustained grievous injuries. Thereafter, the



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claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the rider of the motor cycle bearing Regn.No.TN-34-M-3084 had driven the vehicle in a rash and negligent manner and caused the accident.

11. With regard to the quantum of compensation, the Tribunal has awarded a total compensation of Rs.3,63,337/-. Due to the said accident, he sustained grievous injuries. Further, the compensation awarded by the Tribunal under the head 'loss of earning capacity' at Rs.2,16,000/- appears to be low. Therefore, the compensation granted by the Tribunal especially with regard to 'loss of earning capacity' is to be enhanced. Considering the age and nature of injuries, the Tribunal has assessed 20% disability and adopted the multiplier 15 which are the correct assessment. It is also mainly contended that no amount has been awarded by the Tribunal with regard to the Attender Charges.

12. This Court is of the considered opinion that the appellant/claimant was aged about 38 years at the time of the accident. After medical examination,



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PW2/Doctor has issued Ex.P9/Disability Certificate. Though the doctor assessed the disability at 39.96%, the Tribunal has reduced the same and has assessed the disability at 20% after considering the injuries sustained by the appellant. Due to the accident, he was unable to perform his routine duties in a normal manner. He had taken treatment as seen from the Ex.P4/Copy of Wound Certificate, Ex.P6/Discharge summary; Ex.P7/Medical bills, Ex.P10/X-ray and Ex.P.9/Disability certificate. Undoubtedly, the injuries would have caused the disability and he would be incapacitated to some extent from performing his normal duties. This apart, the accident occurred in the year 2015. Thus, fixing a sum of Rs.6000/- in respect of 'loss of earning capacity' is inadequate. Considering the age of the appellant/claimant and rise in cost of living, this court is inclined to fix Rs.10,000/- as his monthly income and thus arrived at Rs.3,60,000/-(Rs.10,000/- x 12 x 15 x 20% = 3,60,000/-) towards loss of earning capacity. A perusal of Ex.P.4/Copy of wound certificate, Ex.P6/Discharge summary and Ex.P9/Disability certificate, would reveal that the appellant was admitted as in-patient and it would be appropriate to award a sum of Rs.10,000/- under the head, ' Attender charges'. Accordingly, Rs.10,000/- is awarded towards 'Attender Charges'.



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13. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and they do not call for any interference by this Court.

14. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.3,63,337/- to Rs.5,17,337/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of earning capacity	2,16,000/-	3,60,000/-
Pain and Sufferings	25,000/-	25,000/-
Transport & other expenses	10,000/-	10,000/-
Medical Expenses	62,337/-	62,337/-
Extra Nourishment	20,000/-	20,000/-
Loss of Amenities	30,000/-	30,000/-
Attender Charges	---	10,000/-
Total	3,63,337/-	5,17,337/-



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15. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The respondents 1 and 2 are directed to deposit the enhanced amount i.e., Rs.5,17,337/- jointly and severally along with interest, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.794 of 2015 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. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

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A.A.NAKKIRAN, J.

gv

To

1. The Motor Accidents Claims Tribunal
Special Sub- Court-I, Salem.

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

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20.04.2023

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