



C.M.A(MD)No.128 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.10.2023

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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.128 of 2021

Kothar Ali

... Appellant/Petitioner

Vs.

1.Derin

2.United India Insurance Company Ltd.,
Through its Branch Manager,
560 X II Floor,
Kandan Complex,
Opposite to Bus Stand,
Valliyoor.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.666 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub-Court), Tirunelveli, dated 01.06.2015.

For Appellants : Mr.T.Selvakumaran

For R-1 : No Appearance

For R-2 : Mr.A.Shajahan



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This Civil Miscellaneous Appeal is filed by the claimant challenging the quantum of award passed in M.C.O.P.No.666 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub-Court), Tirunelveli, dated 01.06.2015.

2. The appellant/claimant filed M.C.O.P.No.666 of 2014 seeking compensation for the injuries and the consequent disability suffered as a result of the injuries suffered by him in the accident.

3. The Tribunal awarded compensation at Rs.2,98,000/- under the following heads:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	For permanent partial disability(30 X 3000)	90,000
2.	For loss of earning during the treatment period(4500 X 6)	27,000
3.	For Transportation Nutrition and other expenses	15,000
4.	For pain and suffering	15,000
5.	For loss of amenities in life	25,000
6.	For Medical Expenses	1,26,100
	Total	Rs.2,98,100



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4. The learned counsel for the appellant submitted that the compensation awarded under the heads of permanent disability, loss of earning for a period of six months and pain and suffering, are very low and thus, the appellant filed this present Civil Miscellaneous Appeal seeking enhancement of compensation.

5. In reply, the learned counsel for the second respondent/Insurance Company submitted that the Tribunal had considered the oral and documentary evidence properly and awarded just and fair compensation. Disability Certificate produced by the appellant was issued by a private Medical Practitioner and therefore, the Tribunal reduced the disability from 40% to 30%. Rs.3,000/- per percentage was adopted and thus, a sum of Rs.90,000/- was awarded under the head of “permanent partial disability”. The appellant was only an agricultural coolie. Therefore, the award for loss of earning for six months at Rs.27,000/- (Rs.4,500/- X 6), is also appropriate. Appellant underwent treatment only for five days and the amount awarded at Rs.15,000/- under head of “pain and suffering” is also correct. Thus, he prayed for dismissal of this appeal.

6. This Court considered the rival submissions and perused the records.



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7. It is seen from the claim petition averments and the submissions of the learned counsel appearing for the parties that on 28.05.2013, when the appellant was riding his two-wheeler bearing Registration No.TN 72-AZ-5187 from east to west on Cheranmahadevi-Ambai road at about 2.30 p.m., when he reached C.S.I Church, a Mahindra Van bearing Registration No.TN-72-Z-9322, came from opposite direction in a rash and negligent manner and hit against the appellant's motor-cycle. As a result, he suffered multiple fractures in his right leg and injuries all over the body. He was working as an agricultural coolie and was earning Rs.10,000/- per month. Due to the disability suffered, he is not able to work as he was used to do before the accident. His earning capacity is diminished. Thus, he filed the petition seeking compensation of Rs.8,00,000/-.

8. During the enquiry before the Tribunal, on the side of the appellant/claimant, the appellant was examined as P.W.1 and Doctor was examined as P.W.2. Exs.P1 to P9 were marked on his side. On side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 to R3 were produced.

9. From the oral and documentary evidence produced in this case, it is not in dispute that the accident had happened because of the



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rash and negligent driving of the Mahindra Van bearing Registration No.TN-72-Z-9322. The second respondent/Insurance Company has not disputed its liability to pay compensation for the reason that the vehicle was insured with the second respondent/Insurance Company and there is no violation of any policy conditions. The only question arises for consideration in this appeal is,

“Whether the quantum of compensation awarded to the appellant/claimant is just and appropriate?”

10. This Court finds from the award that the Tribunal had taken the disability at 30%, though the Doctor assessed the disability at 40%, for fixing the quantum of compensation under the head of “permanent partial disability” and fixed Rs.3,000/- per percentage and thus, awarded Rs.90,000/-. This amount in the considered view of this Court is too low. Considering the Cost of Inflation Index at the relevant point of time, this Court is of the view that instead of Rs.3,000/- per percentage, a sum of Rs.4,000/- per percentage may be awarded for arriving at the quantum of compensation under the head of “permanent partial disability”. Thus, it comes to Rs.1,20,000/- (Rs.4,000 X 30).



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11. It is seen that under the head of “loss of earning for six months” a sum of Rs.27,000/- was awarded at the rate of Rs.4,500/- per month. As an agricultural coolie, by doing coolie work, the appellant could have earned a sum of Rs.6,000/- per month. Therefore, the loss of earning for six months is fixed at Rs.36,000/- (Rs.6,000/- X 6). A sum of Rs.15,000/- was awarded under the head of “pain and suffering”. This Court finds from Exs.P2 and P4 -Discharge summaries that the appellant suffered “Comminuted Tibial Plateau Fracture”. He was admitted at Sushrushah Hospital on 30.05.2014. Surgery was performed to him on 31.05.2014 and he was discharged on 04.06.214. During the course of treatment, external fixation with 'T' clamp under image intensifier control for fracture tibial plateau (right) was done. Then, he was admitted again on 11.10.2014 in the same hospital for removal of external fixation.

12. It is no doubt that appellant would have suffered pain due to the Comminuted Tibial Plateau Fracture caused because of the accident and during the course of surgical treatment on both occasions as aforesaid. Therefore, this Court is of the view that the compensation awarded at Rs.15,000/- towards pain and suffering is too low and a sum of Rs.50,000/- would be just and appropriate compensation under the head of “pain and suffering”. The compensation awarded under



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other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent partial disability	90,000 (30 X 3000)	1,20,000 (30 x 4000)	Enhanced
2.	For loss of earning during the treatment period	27,000 (4500 X 6)	36,000 (6000 X 6)	Enhanced
3.	For Transportation Nutrition and other expenses	15,000	15,000	Confirmed
4.	For pain and suffering	15,000	50,000	Enhanced
5.	For loss of amenities in life	25,000	25,000	Confirmed
6.	For Medical Expenses	1,26,100	1,26,100	Confirmed
	Total	Rs.2,98,100	Rs.3,72,100	By enhancing a sum of Rs.74,100

19. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.2,98,100/-** (Rupees Two Lakhs Ninety Eight Thousand and Hundred Only) to a sum of **Rs.3,72,100/-** (Rupees Three Lakhs Seventy Two Thousand and Hundred Only) along with interest at the rate of 7.5% per annum from the date of petition till



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date of realisation and proportionate costs.

(ii) claimant is not entitled for interest during the default period, if any.

(iii) The Insurance Company is directed to deposit the enhanced award amount with accrued interest and costs after deducting the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The claimant is permitted to withdraw the award amount, with proportionate interests and costs.

No Costs.

12.10.2023

pm

Index:Yes/No

NCC:Yes/No

To,

1.The Motor Accident Claims Tribunal,
(Special Sub-Court),
Tirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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