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C.M.A.No.3229 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3229 of 2024

M.Lakshminarayanan

... Appellant

Vs.

1.T.Manoharan

2.The New India Assurance Co. Ltd.,
Motor Accident second Party Cell,
No.45, Moore Street,
Chennai – 1.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.02.2018 made in M.C.O.P.No.2417 of 2011 on the file of Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Notice dispensed with [R1]
Mr.C.Johnson [R2]



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JUDGMENT

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The above appeal is filed by the petitioner/claimant seeking an enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, (In the VI Court of Small Causes, Chennai) in M.C.O.P.No.2417 of 2011.

2. In view of the judgment, which is going to be passed in this appeal, notice to the 1st respondent is dispensed with.

3. The case of the appellant is that, on 25.12.2010, he was travelling as pillion rider in a motorcycle bearing Regn.No.TN-03-D-8503 on the T.H. Road and when the motorcycle reached near Gopal Chettiyar Rolling Mill, at that time, a van bearing Regn.No.TN-04-V-8749, belonging to the first respondent, which was insured with the second respondent, driven by its driver, in a very rash and negligent manner and dashed on the back side of the motorcycle, thereby the appellant fallen down and sustained grievous injuries. Therefore, the appellant had filed a claim petition claiming a sum of Rs.3,00,000/-, which was restricted to Rs.2,00,000/- for the injuries sustained by him in the said road accident.



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4. Before the Tribunal, the appellant had examined three witnesses viz., P.W.1 to P.W.3 and marked 17 documents viz., Ex.P.1 to Ex.P.17. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 5 documents viz., Ex.R.1 to Ex.R.5. After adjudication, the Tribunal awarded a sum of Rs.86,000/- as compensation to the appellant. Not satisfied with the same, the appellant has preferred the present appeal seeking enhancement.

5. Learned counsel appearing for the appellant submitted that, though the doctor P.W.3 had issued disability certificate assessing the disability of the appellant as 35% partial permanent disability, however, the Tribunal had re-assessed the same at 5% only, which is not sustainable and the same requires to be re-considered by this Court. Further, the compensation awarded under the other heads is on the lower side, which requires to be enhanced. Accordingly, he prays for appropriate enhancement in favour of the appellant.

6. Per contra, learned counsel appearing for the second respondent/insurance company submitted that, the Tribunal has considered all the materials in proper perspective and awarded compensation under the



various heads, which are just and reasonable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent 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. In this regard, this Court perused Ex.P.16, which is the disability certificate of the appellant issued by the doctor and the same reveals that the appellant had suffered partial permanent disability of 35%. Without considering the said certificate, the Tribunal had erroneously re-assessed the disability of the appellant at 5% as partial permanent disability and awarded a sum of Rs.15,000/- towards loss of earning capacity due to disability by rightly adopting a sum of Rs.3,000/- per percentage of disability. This court is of the view that though P.W.3 is a private practising doctor, who is not a competent person to issue disability certificate, however, considering the nature of the injuries sustained by the appellant and considering the fact that the percentage



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of disability varies from one doctor to another, this court is inclined to fix the percentage of disability at 20%. Therefore, the compensation awarded under the head of loss of earning capacity due to disability stands enhanced to a sum of Rs.60,000/- (20 x Rs.3,000/- = Rs.60,000/-).

9. Further, the Tribunal had awarded a sum of Rs.20,000/- towards pain and suffering; Rs.10,000/- towards transport and extra nourishment; Rs.18,000/- towards loss of income for 2 months; Rs.900/- towards attendant charges; Rs.5,000/- towards disability/loss of amenities and Rs.16,954/- towards Medical bills. This Court finds that the compensation awarded under the heads pain and sufferings, transport and extra nourishment, loss of income for 2 months, attender charges and medical bills are just and reasonable and the same is confirmed.

10. Insofar as the compensation awarded under the head disability/loss of amenities, no compensation can be awarded under such head as the same is not a conventional head, which attract any compensation. Therefore, the compensation awarded under the said head is accordingly set aside.



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11. In view of the above, the compensation awarded by the Tribunal

is modified as under :-

S. No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Pain and Sufferings	20,000/-	20,000/-
2	Transport and Extra nourishment	10,000/-	10,000/-
3	Loss of earning capacity due to disability (20% x Rs.3,000/- per percentage)	15,000/-	60,000/- (enhanced)
4	Loss of income for 2 months (2 x Rs.9,000/-)	18,000/-	18,000/-
5	Attender charges (3 x Rs.300/- per day)	900/-	900/-
6	Disability/Loss of amenities	5,000/-	-----
7	Medical bills	16,951/-	16,951/-
	Total	85,851/-	1,25,851/-
	Rounded off to	86,000/-	1,26,000/-

12. Since there is a violation of insurance policy conditions, the Tribunal had rightly ordered for pay and recovery, which does not require any interference at the hands of this court, and accordingly, the same is confirmed.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the impugned award is modified, enhancing the compensation amount from **Rs.86,000/-** to **Rs.1,26,000/-**. The second respondent/ Insurance Company is



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directed to deposit the compensation amount, awarded by this Court, to the credit of M.C.O.P.No.2417 of 2011 along with interest at the rate of 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 two weeks (2) 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 (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount. Further, the 2nd respondent is at liberty to recover the compensation amount from the 1st respondent without filing any petition. It is made clear that the appellant/claimant will not be entitled to any interest for the delay period. There shall be no order as to costs in the present appeal.

10.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Motor Accident Claims Tribunal, (In the VI Court of Small Causes),



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