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CMA.No.1236 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1236 of 2024

D. Ezhialazhan

.... Appellant

VS.

1. S. Ramesh

2. The Branch Manager,
National Insurance Company Limited,
BO, 165, Nethaji Road, Manjakuppam,
Cuddalore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.01.2023 in M.C.O.P.1626 of 2019 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Cuddalore.

For Appellant	: Mrs. Ramya V. Rao
R1	: Notice dispensed with
For R2	: Mrs.R. Rathna Thara

J U D G M E N T



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The appellant is the claimant in M.C.O.P.1626 of 2019 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Cuddalore, and he filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 23.07.2019.

2. The case of the claimant is that on 23.07.2019 he was riding his TVS Super XL moped bearing Registration Number TN-31-AE-9291 on Nethaji Road, Cuddalore, and at about 14.45 hours, a Hero HF Deluxe motorcycle bearing Registration Number TN-32-AM-2235, owned by the first respondent, hit his two wheeler from behind, as a result of which he fell down and sustained injuries. He was immediately rushed to the hospital where he was treated as an inpatient for twenty days.

2.1. According to the claimant, the rash and negligent driving of the rider of Hero HF Deluxe motorcycle bearing Registration Number TN-32-AM-2235 was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, the owner and the insurer are jointly and severally



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liable to pay compensation to him.

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3. In the Tribunal the first respondent, the owner of the vehicle, remained absent and was set *ex parte*. The second respondent Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN-32-AM-2235 and directed the second respondent Insurance Company to pay compensation of Rs.4,07,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 21.01.2023. The Tribunal also held that the liability of the respondents are joint and several.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



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6. Heard Mrs. Ramya V. Rao, learned counsel for the appellant and Mrs. R. Rathna Thara, learned counsel for the second respondent.

7. Mrs. Ramya V. Rao, learned counsel for the appellant contended that the Tribunal awarded a sum of Rs.5,000/- per percentage of disability and the same is inadequate as the claimant had sustained a fracture on his left leg. She also contended that the claimant was a carpenter by profession earning a sum of Rs.20,000/- per month. However, the Tribunal had fixed the notional monthly income of the claimant only as Rs.12,000/-, which, according to her, is on the lower side. She further contended that the Tribunal had awarded meagre amounts under the other heads and therefore prayed for overall enhancement of compensation.

8. Per contra, Mrs. R. Rathna Thara, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the



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same need not be disturbed.

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9. A perusal of the records shows that the claimant was a carpenter by profession and according to him he was earning a sum of Rs.20,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.12,000/-. Considering the year of accident, this Court is of the opinion that fixing the notional monthly income of the claimant as Rs.15,000/- would meet the ends of justice. The Tribunal has awarded Rs.5,000/- per percentage of disability since there was no functional disability. It is enhanced to Rs.7,000/- per percentage. The amount awarded under 'loss of amenities' is enhanced from Rs.10,000/- to Rs.25,000/-.

9.1. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Partial Permanent Disability	2,10,000/- (42x5000)	2,94,000/- (42x7000)
2.	Pain and sufferings	60,000/-	60,000/-
3.	Loss of income	72,000/- (12,000x6)	90,000/- (15,000x6)
4.	Attender charges	15,000/-	15,000/-
5.	Medical Expenses	10,000/-	10,000/-
6.	Transportation charges	10,000/-	10,000/-
7.	Extra nourishment	20,000/-	20,000/-
8.	Loss of amenities	10,000/-	25,000/-
	Total	4,07,000/-	5,24,000/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,07,000/- to Rs.5,24,000/- which would carry interest at the rate of 7.5% per annum.



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11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.4,07,000/- to Rs.5,24,000/-.
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The second Respondent, the National Insurance Company Limited, Cuddalore, is directed to deposit the enhanced compensation amount, i.e., Rs.5,24,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.1626 of 2019 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order.



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v. The appellant/claimant is not entitled to claim any interest for the period of delay of 213 days in filing this appeal, as per the orders of this Court dated 26.03.2024 in C.M.P. No.1814 of 2014.

vi. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

30.08.2024

Index : Yes/No
Speaking/Non-speaking order
bga
To

1. The Principal Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore,
2. The Branch Manager,
National Insurance Company Limited,
BO, 165, Nethaji Road, Manjakuppam,
Cuddalore.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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