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Civil Miscellaneous Appeal No.737 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.737 of 2024

Minor V Vijay

... Petitioner/Appellant

Vs.

1.M.Vasudevan

2.The Manager,

M/s.MAGMA HDI General Insurance Company limited,

Navins Presidium, 3rd Floor,

New No.17/19, B Block,

3-A, Nelson manickam Road,

Chennai 600 029

Now Present Address

1st Floor, Grace building, Door No.25/3,

MC Nicholas Road,

Chetpet, Chennai 600 031

..Respondents/Respondents

[No relief sought against the 1st respondent

Hence, notice may be dispense with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and judgment made in M.C.O.P.No.827 of 2015 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani, dated 22.11.2018 and for enhancement of compensation.

For Appellant : Mr.C.Prabakaran



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For Respondents : Mrs. R.Sreevidhya
for R2

JUDGMENT

This appeal has been filed by the Insured seeking for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Additional District Judge [Fast Track Court], Vellore, in M.C.O.P.No.66 of 2019, dated 14.03.2023.

2. Heard Mr.C.Prabakaran, learned counsel for the petitioner and M/s.R.Sreevidhya, learned counsel for 2nd respondent.

3. The Appellant, who was aged about 14 years at the time of accident was driving a moped. The lorry that was driven by the 1st respondent was coming in the opposite direction and had hit and dashed against the appellant. As a result of this accident, the appellant sustained multiple injuries all over the body. The claimant / insured filed a claim petition before the Tribunal and the Tribunal fixed the total compensation payable to the appellant at Rs.3,01,750/-. Out of this, the Tribunal had



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deducted 10% for contributory negligence and thus, the total compensation fixed is Rs.2,71,575/- with interest at the rate of 7.5% per annum.

3. The main grounds that were raised by the learned counsel for the appellant is that the appellant was only driving a moped with a capacity of 50CC and therefore, even though he was a minor, there is no question of attributing contributory negligence against the appellant. The learned counsel further submitted that the tribunal had fixed the compensation under the head of disability by adopting percentage method and only Rs.3,000/- per percentage was allowed even though the incident had taken place during the year 2018. The learned counsel further submitted that the Tribunal had fixed a very low compensation under the head of pain and sufferings.

5. Per contra, the learned counsel for 2nd respondent submitted that the Tribunal has given sufficient reasons while fixing the compensation and hence, the award passed by the Tribunal does not require the interference of this Court.



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6. In the instant case, the appellant was admittedly aged about 14 years at the time of the accident. The father of the appellant seems to have given the moped to the appellant for filling petrol. Unfortunately, the vehicle met with an accident. It is seen from the award of the Tribunal that the accident had taken place in the middle of the Road and considering the fact that the appellant was just aged about 14 years and he had no experience in driving in the main road, the Tribunal was perfectly right in fixing the contributory negligence on the part of the appellant and hence, here is no ground to interfere with the same.

12. Insofar as the fixation of compensation under the head of disability, the Tribunal had fixed only Rs.3,000/- per percentage. This requires enhancement, since the accident had taken place in the year 2018 and by that time, the cost of living has increased and this Court has been consistently fixing Rs.7,000/- per percentage. Taking that into consideration, the compensation fixed by the Tribunal can be enhanced and under the head of disability, total compensation can be fixed as $(7000/- \times 40) = \text{Rs.}2,80,000/-$. Thus, the compensation is increased from



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Rs.1,20,000/- to Rs.2,80,000/-. The compensation fixed under the other heads does not require the interference of this Court. The compensation fixed by the Tribunal is modified only insofar as the head of disability is concerned and it is enhanced from 1,20,000/- to 2,80,000/-. In all other respects, the award stands confirmed.

13. In the light of the above discussion, the compensation awarded by the Tribunal is modified/enhanced as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income due to 40% disability	2,80,000/-
2.	Pain and sufferings	30,000/-
3.	Transportation	5,000/-
4.	Medical Expenses	1,00,000/-
5.	Extra nourishment	10,000/-
6.	Attender Charges	4,750/-
7.	Loss of earning	12,000/-
8.	Loss of Future prospectus	20,000/-
	Total	4,61,750/-
	10% for Contributory negligence	46,175/-
	Total Compensation is fixed at	4,15,575/-

13. The compensation awarded by the tribunal at Rs.2,71,575/- is



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enhanced to Rs.4,15,575 /-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.4,15,575/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,44,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 207 days as was ordered by this Court in C.M.P.No.1012 of 2024, dated 11.03.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

13. In the result, this Civil Miscellaneous appeal is allowed to the extent indicated herein above. No costs.

01.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

Motor Accident Claims Tribunal cum IV Additional District Judge, Erode



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District at Bhavani

N.ANAND VENKATESH.,J
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