



C.M.A.No.103 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.01.2024**

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.103 of 2022

S.Ashok Kumar

... Appellant

vs.

1. A.Stephen

2. United India Insurance Company Limited,
Motor III party Claims Office,
Silingi Building, No.134,
Greams Road,
Chennai- 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 20.09.2019 passed in M.C.O.P.No.4822 of 2016 on the file of the Motor Accident Claims Tribunal, Chennai (in the V Court of Small Causes) and enhance the award amount in the interest of justice.



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For Appellant : Mr.Terry Chella Raja
for Mr.C.Richard Suresh Kumar

For Respondents : Mr. S.Dhakshnamoorthy (R2)
Notice dispensed with (R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Award dated 20.09.2019 made in M.C.O.P.No.4822 of 2016 on the file of the Motor Accident Claims Tribunal, Chennai.

2. The Appellant is the Claimant in M.C.O.P.No.4822 of 2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation on account of the injuries sustained by him in an accident that took place on 03.07.2016. On the side of the Appellant/Claimant, the Appellant/Claimant deposed himself as P.W.1 and the Doctor who issued disability certificate was examined as P.W.2 and Exs.P1 to P9 were marked. On the side of the 2nd Respondent/Insurance



Company no witnesses were examined and no documents were marked.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,93,400/- as compensation to the appellant. Details of the compensation awarded by the Tribunal under the impugned Award, are as follows :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Pain and sufferings	40,000.00
Transport and Extra nourishment	40,000.00
Disability (15x3000)	45,000.00
Loss of Income during treatment period (3x8000)	24,000.00
Attender charges (11x 400)	4,400.00
Loss of amenities	30,000.00
Medical expenses	10,000.00
Total	1,93,400.00

4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of



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compensation.

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5.The learned counsel appearing for the Appellant contended that due to the injury sustained by the Claimant in the accident his right leg was amputated, due to which he is unable to stand and climb steps and even walk properly, but the Claims Tribunal has failed to consider the same and awarded meagre compensation. He further submitted that the Claims Tribunal ought to have taken into account the deposition of the Doctor as well as the medical documents viz., Ex.P9- disability certificate and Ex.P8- X-Ray and should have awarded compensation towards "Loss of Earning Capacity". He further submitted that though P.W.2- the Doctor has assessed disability @ 20%, the Tribunal has fixed disability only @ 15%, while computing the compensation towards 'Disability'. He further submitted that the compensation awarded by the Tribunal is very low and hence prays for enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Claims Tribunal on considering both oral and



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documentary evidence has rightly awarded the compensation under various heads which cannot be said to be very low and therefore the same need not be interfered with.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.It is the case of the appellant that Claims Tribunal has fixed the disability of the injured @ 15% instead of 20% as assessed by P.W.2-Doctor and awarded compensation at Rs.45,000/- at the rate of Rs.3,000/- per percentage, without considering the Disability certificate. When the matter was taken up for hearing on 28.07.2023, in order to determine a just compensation to be awarded by this Court, this Court referred the Appellant/ Claimant to Royapettah Government Hospital, Chennai for examination by the Medical Board constituted by the said hospital and after examination, the Medical Board was directed to submit a report to the Registry, pursuant to which Medical Board after examining the Appellant/Claimant has given a



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report dated 26.12.2023, and the same was forwarded to the Registry. A perusal of the aforesaid report would go to show that the disability of the Claimant is assessed @ 8% . Under these circumstances, the learned counsel for the Appellant submitted that the disability fixed by the Tribunal may be confirmed and the same has been agreed by the learned counsel for the 2nd Respondent/Insurance Company. That apart, from a perusal of Ex.P5-photos of claimant, it is clearly seen that there are no grievous injuries and there is no amputation as alleged by the Claimant. In the Award dated 20.09.2019, the Claims Tribunal has clearly stated that the Doctor who issued disability certificate has not treated the Claimant and he has also not assessed the disability of the whole body and also not produced calculation sheet for his assessment and therefore by considering that the disability assessed by P.W.2 is on the higher side has rightly fixed the disability@ 15% and by fixing a sum of Rs.3,000/- per percentage has awarded a sum of Rs.45,000/- towards Disability.

9. Further, considering the nature of injuries sustained by the Claimant, the quantum of compensation awarded by the Tribunal under



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various heads to the Respondent/Claimant, totalling a sum of **Rs.1,93,400/-**, is just and reasonable. For the foregoing reasons, this Court does not find any merit in this Appeal and the same is liable to be dismissed. It is represented by the learned counsel appearing on either side that the compensation awarded by the Tribunal has already been deposited and withdrawn by the Claimant. The said statement is taken on record.

10. Accordingly, the Civil Miscellaneous Appeal stands dismissed, confirming the Award passed by the Motor Accident Claims Tribunal (in the V Court of Small Causes, Chennai). No costs.

03.01.2024

Index : Yes / No
Speaking Order : Yes / No
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KRISHNAN RAMASAMY,J.



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To:

1. The Motor accident Claims Tribunal,
V Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.

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