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Civil Miscellaneous Appeal No.1096 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1096 of 2024

Kamalraj
S/o.Arokyanathan

... Appellant

Vs.

1.Meenakshi Sundaram
S/o.Sudhakar

2.Bajaj Alliance General Insurance Co. Ltd.,
Old No.276/277, New No.497/498,
5th Floor, Poonamallee High Road,
Isana Kattima Building,
Chennai - 600 106.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2023 made in M.C.O.P.No.6481 of 2017 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.P.Shanmugam
for M/s.S Law Firm

For Respondents : Mr.J.Michael Visuvasam [R2]



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JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.6481 of 2017, dated 09.01.2023, has filed this appeal.

2. The case of the claimant is that on 03.11.2016, he was travelling as a pillion rider in a two wheeler and at about 11.00 p.m., when the vehicle was going towards Vandalur bridge at GST road, the offending vehicle, a Car, was driven in a rash and negligent manner and it dashed on the two wheeler as a result of which the claimant fell down and suffered fracture of right thigh and fracture tibia right leg. The claimant underwent treatment as an inpatient from 04.11.2016 to 28.11.2016. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and



negligent driving on the part of the driver of the offending vehicle.

Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.76,500/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Pain and sufferings	20,000/-
2.	Transportation	4,000/-
3.	Extra Nourishment	10,000/-
4.	Attender Charges	7,500/-
5.	Damages to clothes	1,000/-
6.	Loss of amenities	10,000/-
7.	Loss of earnings	24,000/-
	Total	76,500/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

4. The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed this appeal seeking enhancement of compensation.



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5. When the matter came up for hearing on 06.06.2024, this Court passed the following order:

"The appellant was not granted any compensation under the head of disability since the appellant did not avail the opportunity to get himself assessed before the Medical Board to assess the disability suffered by the appellant. The learned counsel for the Insurance Company submitted that atleast six opportunities were given and the appellant did not avail those opportunities. This Court wants to give one last chance to the appellant. The appellant shall be present before the Medical Board attached to the Rajiv Gandhi General Hospital, Chennai-600 003. The Medical Board shall assess the disability, if any, suffered by the appellant and shall submit its report on or before 15.7.2024. A copy of this order shall be marked to the Dean of Rajiv Gandhi General Hospital, Chennai-600 003.

2.Post this case on 18.7.2024."

6. Pursuant to the above order, the claimant appeared before the Regional Medical Board at Rajiv Gandhi Government General Hospital, Chennai. The Medical Board, on assessment of the claimant, has fixed the disability at 13%.

7. Heard Mr.P.Shanmugam, learned counsel for appellant/claimant and Mr.J.Michael Visuvasam, learned counsel for second respondent insurance company.



8. This Court carefully considered the submissions made by learned counsel on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The Tribunal has not granted any compensation under the head 'disability' since the claimant was not subjected to assessment before the Medical Board. During the pendency of this appeal, the claimant was directed to go before the Medical Board and the Medical Board has also submitted its report. 13% disability has been assessed. Considering the fact that the accident had taken place on 03.11.2016, this Court is inclined to apply per percentage method and grant a sum of Rs.7,000/- per percentage. Accordingly, the compensation payable under the head 'disability' would be Rs.91,000/- [7000 * 13].

11. The claimant underwent treatment as an inpatient for nearly 25 days. Therefore, this Court is inclined to enhance the compensation under the heads 'pain and sufferings', 'extra nourishment' 'attender charges' and



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'transportation charges' to Rs.25,000/-, Rs.25,000/-, Rs.15,000/- and Rs.10,000/- respectively.

12. The compensation awarded under other heads is justified and the same does not require the interference of this Court.

13. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Pain and sufferings	20,000/-	25,000/-
2.	Transportation	4,000/-	10,000/-
3.	Extra Nourishment	10,000/-	25,000/-
4.	Attender Charges	7,500/-	15,000/-
5.	Damages to clothes	1,000/-	1,000/-
6.	Loss of amenities	10,000/-	10,000/-
7.	Loss of earnings	24,000/-	24,000/-
8.	Disability	-	91,000/-
	Total	76,500/-	2,01,000/-

14. The compensation awarded by the Tribunal at Rs.76,500/- is enhanced to Rs.2,01,000/-. The second respondent insurance company is



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directed to deposit the compensation awarded by this Court, 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 (4) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,24,500/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 194 days as was ordered by this Court in C.M.P.No.7144 of 2024 in C.M.A.Sr.No.14807 of 2024 dated 24.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

31.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,

III Court of Small Causes,

Chennai.



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N.ANAND VENKATESH, J.

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