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C.M.A.No.3130 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3130 of 2024

Manikandan @ Karthik
S/o.Sakthivel

... Appellant / Petitioner

Vs.

1.Nimya
W/o.Gurusivaganam

2. The Branch Manager,
M/s.United India Insurance Company Ltd.,
No.50A, Pallivasal Street,
Perambalur.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.10.2021 made in M.C.O.P.No.511 of 2016 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.T.Gobinath

For Respondents : Mr.M.J.Vijayaraghavan for R2



C.M.A.No.3130 of 2024

WEB COPY

J U D G M E N T

The appellant / claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Principal District Court, Perambalur, in M.C.O.P.No.511 of 2016, dated 21.10.2021, has filed this appeal.

2. On 04.04.2016 at about 10.00 a.m., the claimant was traveling as a pillion rider in a two-wheeler on Trichy-Tanjore Main Road. When the vehicle was near Thuvakudi Anna Arch, a car belonging to the first respondent came in a rash and negligent manner and dashed on the two-wheeler, as a result of which, the claimant fell down and sustained multiple grievous injuries. He underwent treatment in the Government Hospital, Thiruverumbur and Government Hospital, Trichy. The Medical Board assessed the disability at 10%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.



C.M.A.No.3130 of 2024

WEB COPY

3. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. On the side of the second respondent, R.W.1 was examined and Exs.R1 to R5 were marked. The Court document was marked as Ex.C1. 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 rash and negligent driving on the part of the driver of the car. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.56,500/- under various heads. The above compensation was directed to be paid by the second respondent along with interest at 7.5% p.a.

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



C.M.A.No.3130 of 2024

WEB COPY

5. The learned counsel appearing for the appellant submitted that the appellant was working as a Fitter and was earning 750/- per day and due to rash and negligent driving of the driver of the second respondent, the appellant sustained grievous injuries. He further submitted that the Tribunal has not taken into account the appellant's inability to work in future and has given much less importance. He further submitted that the appellant has taken treatment for three months and the amount awarded by the Tribunal towards loss of income is minimal. When the doctor has clearly deposed about the disability suffered by the claimant, the amount of Rs.3,000/- per percentage of disability awarded by the Tribunal is wholly inadequate. Further, the amount awarded under the head extra nutrition is also very minimal. Insofar as the head pain and sufferings is concerned, the Tribunal has not awarded any compensation. Hence, the learned counsel for the appellant prays for enhancement of compensation.

6. The first respondent remained *ex-parte* before the Tribunal.



C.M.A.No.3130 of 2024

WEB COPY

7. Per contra, learned counsel appearing for the second respondent / Insurance company denied the manner of accident and claimed that the rider of the two wheeler crossed the road without noticing the oncoming vehicle and caused the accident. The accident took place only negligence of the rider of the motorcycle. Hence, composite negligence will be applicable to the facts of the case. Further, the learned counsel denied the nature of injuries, period of treatment and disability incurred by the injured claimant.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. In the instant case, the accident had taken place in the year 2016. However, the Tribunal, while adopting the per percentage method, has fixed only a sum of Rs.3,000/- per percentage for granting compensation under the head 'disability'. As the years progress, the amount that is fixed per percentage must also increase considering the cost of living and therefore,



C.M.A.No.3130 of 2024

this Court is inclined to fix an amount of Rs.6,000/- per percentage.

Accordingly, the compensation under the head 'disability' is fixed at Rs.60,000/- (Rs.6,000/- * 10%).

10. Further, it is submitted that though the claimant was working as the Fitter and was earning Rs.750/- per day, the Tribunal has awarded a meagre sum of Rs.6,500/- as notional income. Though no proof is produced to substantiate the monthly income, this Court is of the view that Rs.7,000/- could be fixed as notional income. Further, it is submitted that the claimant has taken treatment for three months. Considering the injuries sustained by the claimant and the treatment undergone by him and also considering the avocation of the claimant, this Court is inclined to grant compensation under the head 'loss of earnings' at Rs.21,000/- [Rs.7,000/- * 3]. This Court is also inclined to enhance the compensation under the head extra nutrition to Rs.20,000/-. Since the Tribunal has not awarded any compensation under the head pain and sufferings, this Court is inclined to award a sum of Rs.50,000/- under the pain and sufferings. The compensation that has been



C.M.A.No.3130 of 2024

awarded under the head travel expenses does not require the interference of this Court.

11. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Disability (Rs.6,000/- * 10%)	Rs.30,000/-	Rs.60,000/-
2	Loss of earning (Rs.7,000 * 3)	Rs.6,500/-	Rs.21,000/-
3	Extra Nutrition	Rs.10,000/-	Rs.20,000/-
4	Travel expenses	Rs.10,000/-	Rs.10,000/-
5	Pain and sufferings	-	Rs.50,000/-
	Total	Rs.56,500/-	Rs.1,61,000/-



C.M.A.No.3130 of 2024

WEB COPY

12. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.56,500/- is hereby enhanced to Rs.1,61,000/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.511 of 2016 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. Insofar as the enhanced compensation of Rs.1,04,500/- is concerned, the claimant will not be entitled for interest for the delay period of 259 days as was ordered by this Court in C.M.P.No.6522 of 2023, dated 30.10.2024. The other directions issued by



C.M.A.No.3130 of 2024

WEB COPY

the Tribunal with regard to the mode of payment of compensation remain unaltered. No costs.

04.12.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
Principal District Court,
Perambalur.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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C.M.A.No.3130 of 2024

M.DHANDAPANI, J.

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C.M.A.No.3130 of 2024

04.12.2024