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C.M.A.No.2834 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2834 of 2021

M.Jayachandran

... Appellant/Petitioner

Vs.

1. Mrs.Revathi

2. HDFC Ergo General Insurance Co., Ltd

New No.528, Old No.559,

2nd Floor, Anna Salai,

Teynampet, Chennai – 600 018

...Respondents/Respondents

PRAYER:Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the appeal and enhance the compensation in M.C.O.P.No.1265 of 2015 on the file of the Motor Accidents Claims Tribunal/I Additional Sub Judge, Cuddalore.

For Appellant	:	M/s. A.N.Viswanatha Rao
For R1	:	M/s.T.Gobinath
For R2	:	N.A



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement awarded in M.C.O.P.No.1265 of 2015 on the file of the Motor Accidents Claims Tribunal/I Additional Sub Judge, Cuddalore.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. According to the claimant, he has sustained injuries on 12.03.2015 at 5.30 a.m. while he was riding a two wheeler on the Vadalur - Neyveli Main Road. The first respondent was driving Bolero car, dashed the two wheeler and caused the following injuries: Fracture closed Middle Shaft of Right Humerus Bone and Fracture of Left Clavicle Bone.

4. He was admitted in hospital on 12.03.2015 and discharged on 02.04.2015. After being in-patient for 17 days, the Medical Board constituted by the Government Headquarters Hospital, Cuddalore, has assessed his disability as 8% for the whole body. After due enquiry, he was



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awarded total compensation for a sum of Rs.1,46,174/- (Rupees One lakh forty six thousand one hundred and seventy four only) with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

5. The claimant was aged 65 years and he has sustained 2 fractures. One in the Middle Shaft and another one in the Clavicle Bone. The learned Counsel further submits that the injury on the Shaft bone made him seek assistance from another person to do his regular activities. Tribunal has awarded attender's charges and not awarded just compensation. Similarly, the learned counsel also stated that the compensation awarded under the head Partial permanent disability is on the lower side.

6. The learned counsel for the Insurance company submits that the Tribunal after considering the injuries as well as the medical records, taken note of the period of treatment and awarded compensation and loss of amenities and there is no need for enhancement.



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7. Though the claimant has sustained two fractures, the injuries sustained by him are not functional disability. This Court is awarding compensation of Rs.4,000/- per percent for the injuries sustained in the year 2015, by following the judgment of *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]* . Accordingly, compensation awarded under disability is modified as Rs.32,000. The Tribunal has awarded 2 months income as temporary loss of income to the claimant herein, while so, the claimant is entitled for attender's charges for 2 months. Accordingly, attender's charge awarded as Rs.16,000/-. The Tribunal while quantifying the loss of income of the claimant during the treatment period has awarded Rs.6,500/- per month as notional income which is on the lower side and considering the date of accident, the same is modified as Rs.12,000/- per month and accordingly awarded Rs.36,000/-. As far as the other heads are concerned, the awards are reasonable and is confirmed.

8. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



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S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability (8%)	Rs.24,000/-	Rs.32,000/-	Enhanced
2.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Attender Charges	Rs.5,000/-	Rs.16,000/-	Enhanced
5.	Pain and sufferings	Rs.30,000/-	Rs.30,000/-	Confirmed
6.	Loss of amenities	Rs.10,000/-	Rs.10,000/-	Confirmed
7.	Medical Bills	Rs.49,174/-	Rs.49,174/-	Confirmed
8.	Temporary loss of Income	Rs.13,000/-	Rs.36,000/-	Enhanced
	Total	Rs.1,46,174/-	Rs.1,88,174/-	Enhanced

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,46,174/- is hereby enhanced to **Rs.1,88,174/- [Rupees one lakh eighty eight thousand one hundred and seventy four only]** together along with interest at the rate of 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 amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1265 of



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2015 on the file of the I Additonal Sub Judge, Motor Accident Claims Tribunal, Cuddalore. 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. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

30.01.2024

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No
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To

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K. RAJASEKAR, J.

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