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CMA.No.1465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1465 of 2024

Abdul Sheik Dhawood

.... Appellant

VS.

1. K.V. Babu Sundaresan

2. The United India Insurance Company Limited,
No.134, Greams Road,
Third Party Claims Office,
Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 22.08.2023 in M.C.O.P.349/2018 on the file of the III Small Causes Court, Motor Accidents Claims Tribunal, Chennai.

For Appellant	: Ms. P. Pooja for M/s. V. Mohan Choudary
R1	: Notice dispensed with
For R2	: Mr. S. Dakshinamoorthy

J U D G M E N T



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The appellant is the claimant in M.C.O.P.349/2018 on the file of the III Small Causes Court, Motor Accidents Claims Tribunal, Chennai, and he filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.11,00,000/- for the injuries sustained by him in a road accident that took place on 20.08.2017.

2. The case of the claimant is that on 20.08.2017 he was riding his motorcycle bearing Registration Number TN-13-H-2545 on Pari salai, Chennai, and at about 10.15 hours, a van bearing Registration Number TN-13- 9507, owned by the first respondent, came in the opposite direction and hit his two wheeler, as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to the hospital.

2.1. According to the claimant, the rash and negligent driving of the driver of the van bearing Registration Number TN-13- 9507, was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation



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to him.

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3. In the Tribunal the first respondent, the owner of the vehicle, remained absent and was set *ex parte*. The second respondent Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, directed the second respondent Insurance Company to pay compensation of Rs.1,93,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 22.08.2023. The Tribunal also held that the liability of the respondents are joint and several.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Ms. P. Pooja, learned counsel for the appellant and



Mr.S. Dakshinamoorthy, learned counsel for the second respondent.

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7. Ms. P. Pooja, learned counsel for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. She therefore, prayed for enhancement of compensation.

8. Per contra, Mr. D.Dakshinamoorthy, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

9. In the claim petition it is stated that the claimant was doing business of sales and service of watches earning a sum of Rs.30,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.13,000/-. The accident took place in the year 2017 and the notional monthly income fixed by the Tribunal is perfectly in order.



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9.1. The claimant was aged 36 years on the date of accident and the Discharge summary (Ex.P.3 and Ex.P4) shows that the claimant had sustained *medial tibial condyle fracture - left and healed left tibial fracture with implant irritation* and he was hospitalised as an inpatient from 24.08.2017 to 28.08.2017 and thereafter from 16.05.2019 to 18.05.2019. The Regional Medical Board, Government Stanley Medical College Hospital, Chennai, has issued the disability certificate (Ex.C1) stating that the claimant had sustained partial permanent disability to an extent of 15%. The Tribunal has awarded Rs.5,000/- per percentage of disability since there was no functional disability. Considering the year of accident, it is enhanced to Rs.7,000/- per percentage. The amount awarded under 'loss of amenities' is enhanced from Rs.10,000/- to Rs.20,000/-. Moreover, the claimant could not have attended to his regular work for about 4 months. In the circumstances, a sum of Rs.52,000/- (13,000x4) is awarded towards loss of earnings.

9.2. The following tabular column would show the amount



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awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Disability	75,000/- (15x5000)	1,05,000/- (15x7000)
2.	Pain and sufferings	30,000/-	30,000/-
3.	Transportation charges	4,000/-	5,000/-
4.	Medical expenses	34,555/-	34,555/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Attender charges	2,400/-	5,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Loss of amenities	10,000/-	20,000/-
9.	Loss of earnings	26,000/- (13,000 x 2)	52,000/- (13,000x4)
	Total	1,92,955/- Rounded off to 1,93,000/-	2,62,555/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,93,000/- to Rs.2,62,555/- which would carry interest at the rate of 7.5% per annum.

10. In the result,



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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.1,93,000/- to Rs.2,62,555/-.
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The second Respondent, the United India Insurance Company Limited,, is directed to deposit the enhanced compensation amount, i.e., Rs.2,62,555/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.349/2018 on the file of the III Small Causes Court, Motor Accidents Claims Tribunal, Chennai, within a period of four weeks from the date of receipt of a copy of this order.
- v. On such deposit being made, the appellant/claimant is at liberty to



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withdraw the same, after following due process of law.

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Index : Yes/No
Speaking/Non-speaking order
bga
To

1. III Small Causes Court, Motor Accidents Claims Tribunal, Chennai
2. The United India Insurance Company Limited,
No.134, Greams Road,
Third Party Claims Office,
Chennai 600 006.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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