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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2047 of 2023

P.Gunasekaran

... Appellant

.vs.

1.V.Rajkumar

2.The Branch Manager,
United India Insurance Co., Ltd.,
having its branch office at 1170,
Muthiah Complex, 2nd Floor, Mettur Road,
Erode – 638 011.

3.S.Anandhan

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award passed in MCOP No.719 of 2018, dated 12.11.2021 on the file of Motor Accident Claims Tribunal (Special Subordinate Court) at Erode.

For Appellant : Mr.V.Regunathan

For Respondents : Ms.J.V.Sandiya Priyadharshini
for Mr.C.Paranthaman
for R2



JUDGMENT

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The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.719 of 2018, dated 12.11.2021 has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 22.06.2017, he was walking on the extreme left side of Avalpoondurai-Elumathur road and at about 5.30 a.m., the offending vehicle which was a car was driven in a rash and negligent manner and had dashed on the claimant. As a result of which, the claimant sustained Type 2 open fracture left leg distal third both bones with Trimalleolar fracture of right ankle. The Medical Board assessed the disability faced by the claimant at 20% temporary disability. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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 come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.3,87,000/- under various heads as follows:



S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Earnings	Nil
2.	Transport to Hospital	27,000
3.	Extra Nourishment	8,000
4.	Attender Charges	Nil
5.	Future Medical Expenses	Nil
6.	Damages to clothes and articles	3,000
7.	Medical expenses	1,99,000
8.	Pain and sufferings	50,000
9.	Permanent Disability & Loss of Earning power	1,00,000
	Total	3,87,000

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

6.Heard Mr.V.Regunathan, learned counsel appearing on behalf of the appellant and Ms.J.V.Sandiya Priyadharshini, learned counsel appearing on behalf of the 2nd respondent.



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7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The compensation that has been granted under the head of disability requires some enhancement. The Tribunal has applied the per percentage method and has fixed only Rs.5,000/- per percentage. The accident had taken place in the year 2017. Therefore, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head of disability is fixed at Rs.1,40,000/- (Rs.7,000/- x 20%).

9.The claimant had taken treatment as an inpatient for nearly eight days and underwent operation. Therefore, this Court is inclined to fix a sum of Rs.10,000/- under the head of extra nourishment and a sum of Rs.8,000/- under the head of attender charges.

10.The compensation that has been fixed under the other heads are very reasonable and the reasoning given by the Tribunal for not granting any compensation under the head of loss of earnings does not suffer from any illegality and require interference.



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11. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Earnings	Nil
2.	Transport to Hospital	27,000
3.	Extra Nourishment	10,000
4.	Attender Charges	8,000
5.	Future Medical Expenses	Nil
6.	Damages to clothes and articles	3,000
7.	Medical expenses	1,99,000
8.	Pain and sufferings	50,000
9.	Permanent Disability & Loss of Earning power	1,40,000
	Total	4,37,000

12. The compensation awarded by the tribunal at Rs.3,87,000/- is enhanced to Rs.4,37,000/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.4,37,000/-, 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 weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.50,000/- is



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N. ANAND VENKATESH., J

ssr

concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 281 days. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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

22.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal (Special Subordinate Court) at Erode.

CMA No.2047 of 2023