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CMA.No.1025 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1025 of 2023

Manibharathi

... Appellant

vs.

1. K.Rajesh

2. The Branch Manager,
New India Assurance Co. Ltd.,
128-a, Thiru.Vi.Ka.Road,
Villupuram.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 14.02.2023 in M.C.O.P.03/2021 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Kallakurichi.

For Appellant : Mr.M.Manoharan

For R2 : Mr.S.Dhakshinamoorthy

J U D G M E N T

The appellant is the claimant in M.C.O.P.03/2021 on the file of the Motor Accident Claims Tribunal, Kallakurichi. He filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking



CMA.No.1025 of 2023

compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that happened on 20.10.2018.

2. The brief case of the appellant / claimant is as follows :

On 20.10.2018, the claimant was travelling as a pillion rider in a two-wheeler bearing Registration number TN-32-E-5477 on Kallakurichi - Kachirapalayam main road and at about 12.15 p.m., when he was nearing Kuthiraichandal, a speeding car bearing Registration number TN 09 AT 9245, came in the opposite direction and hit the two wheeler driven by the claimant, as a result of which, he sustained injuries all over his body. He was immediately rushed to the Government hospital, Kallakurichi from where he was referred to Government Hospital, Salem.

3. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration number TN 09 AT 9245 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.



CMA.No.1025 of 2023

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

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the car and further held that the liability of the owner of the car and the Insurer is joint and several and that they should pay compensation of Rs.8,71,700/- together with interest at the rate of 7% per annum from the date of petition till the date of realisation, vide its orders dated 14.02.2023.

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

7. Heard Mr.M.Manoharan, learned counsel appearing for the appellant and Mr.S.Dhakshinamoorthy, learned counsel for the second respondent.



8. Mr.M.Manoharan, learned counsel appearing for the appellant contended that the compensation awarded by the Tribunal does not commensurate with the injuries sustained by the claimant. He therefore prayed for enhancement of the same.

9. Per contra Mr.S.Dhakshinamoorthy, learned counsel appearing for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. A perusal of the medical records shows that the claimant had suffered fracture on his temporal bone, clavicul bone and tibia. The Medical Board attached to the Government Hospital, Villupuram assessed the partial permanent disability of the claimant as 60%. According to the claimant, he was running a Salon, earning a sum of Rs.25,000/- per month. However, no acceptable evidence was adduced by the claimant to substantiate his contention that he was running a Salon. Hence, a sum of Rs.12,000/- is fixed as notional monthly income of the deceased. On



account of the injuries, the claimant would have been out of action atleast for three months and therefore a sum of Rs.36,000/- (12,000 X 3) is awarded towards loss of income. A perusal of the disability certificate shows that the claimant has not sustained any functional disability warranting this Court to adopt multiplier method. In the circumstances, a sum of Rs.7,000/- is fixed per percentage of partial permanent disability and a sum of Rs.4,20,000/- (60 x 7000) is awarded for 60% of partial permanent disability. The following tabular column would show the award passed by the Tribunal and the modified compensation awarded by this Court:

S.No.	Heads	Amount awarded by the Tribunal	Award of this Court
1	Partial Permanent Disability	Rs.4,00,000/- (80X5,000)	Rs.4,20,000/- (60X7,000)
2	For Loss of income for three months	Nil	Rs.36,000/- (12,000 X 3)
3	Medical expenditure	Rs.4,21,702/-	Rs.4,21,702/-
4	Pain and sufferings	Rs.25,000/-	Rs.25,000/-
5	Attender charges	Rs.10,000/-	Rs.10,000/-
6	For nutrition and food	Rs.10,000/-	Rs.10,000/-
7	For Transport expenses	Rs.5,000/-	Rs.10,000/-
8	Total	Rs.8,71,702/- round off Rs.8,71,700/-	Rs.9,32,702/- round off Rs.9,32,700/-

11. Thus, the compensation awarded by the Tribunal is



CMA.No.1025 of 2023

enhanced to Rs.9,32,700/- that would carry interest at the rate of 7.5% per annum.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.9,32,700/-.
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- iv. The liability of the first respondent (owner) and the second respondent (the New India Assurance Company Limited) is joint and several and the second respondent, the New India Assurance Company Limited is directed to deposit the enhanced award amount i.e. Rs.9,32,700/- (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 within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to



CMA.No.1025 of 2023

the credit of M.C.O.P.03/2021 on the file of the Motor Accidents
Claims Tribunal, Principal Sub Court, Kallakurichi.

- v. On such deposit being made the appellant, claimant is permitted to
withdraw the same with accrued interest and costs, after following
due process of law.

03.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

To

- 1.The Motor Accidents Claims Tribunal,
Principal Sub Court, Kallakurichi.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.



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