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Civil Miscellaneous Appeal No.1715 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.1715 of 2021

and

C.M.P.No.9095 of 2021

The Branch Manager,
Reliance General Insurance Company Limited,
Dhanam Towers, 1st Floor, No.1, Binny Main Road,
Park Road Street,
Tiruppur-641 601.

... Appellant

Vs.

1.Nitheesh

2.P.Muthukumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2018 made in M.C.O.P.No.1809 of 2015 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur.



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For Appellant : Mr.C.Bhuvanasundari

For R1 : Mr.Ma.P.Thangavel

J U D G M E N T

The appellant/Insurance company, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur, in M.C.O.P.No.1809 of 2015, dated 25.10.2018, has filed this appeal.

2. The first respondent is the claimant. The case of the claimant is that on 28.09.2013 at about 11.45 a.m., when he was riding his two wheeler in Avinashi road, a Tata Van, which was coming from the opposite direction, was driven in a rash and negligent manner and dashed the two wheeler ridden by the first respondent, due to which the first respondent/claimant sustained grievous injuries. The first respondent/claimant was working as a mechanic/operator in a mill and was earning a sum of Rs.13,000/- p.m.. Due to the injuries sustained by him, the first respondent/claimant was unable to continue his avocation. It is under these circumstances, the first respondent/claimant has filed the claim petition before the Tribunal seeking for compensation.



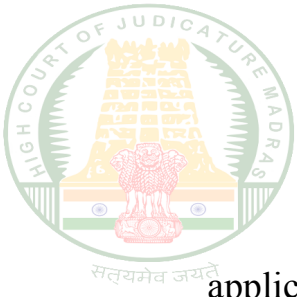
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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the van. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.17,79,000/- by the appellant Insurance Company with interest at the rate of 7.5% p.a.

4. Questioning the quantum of compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

5. Heard Mr.C.Bhuvanasundari, learned counsel for appellant insurance company and Mr.Ma.P.Thangavel, learned counsel appearing for the first respondent.

6. Learned counsel for appellant insurance company submitted that the first respondent/claimant has sustained only fracture and it is not a partial and permanent disability, which does not warrant



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application of multiplier. More over, the Medical Board has not assessed the disability. Hence, the application of multiplier for awarding compensation under the head 'disability' is unwarranted. Learned counsel further submitted that the award passed under the other heads also is on the higher side.

7. *Per contra*, learned counsel for first respondent/claimant submitted that the Tribunal has assigned proper reasons while awarding the compensation and it does not require the interference of this Court. Submitting as above, learned counsel sought for dismissal of this appeal.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. Considering the nature of injury suffered by the claimant, this Court was inclined to refer the first respondent/claimant to the Medical Board to assess the percentage of disability suffered by him. However, the first respondent/claimant is not inclined to subject himself before the Medical Board. Further, the private doctor, who examined the first



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respondent/claimant has assessed the disability at 56% without any basis.

Hence, taking into account the judgment of the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar*** reported in ***2011 (1) SCC 343*** and also considering the nature of injury suffered by the first respondent/claimant, this Court is of the considered view that application of multiplier in this case will not arise and hence, this Court fixes a sum of Rs.3,000/- per percentage of disability. Accordingly, the compensation payable under the head 'disability' would be Rs.1,68,000/- [3000 * 56].

10. Considering the nature of injury suffered by the first respondent/claimant, this Court is inclined to enhance the compensation under the heads 'pain and suffering', 'nutrition' and 'transportation' to Rs.40,000/-, Rs.25,000/- and Rs.10,000/- respectively. Further, this Court is of the view that the compensation awarded under the heads 'loss of amenities' and 'mental agony' is not warranted in this case and hence, the same is set aside. However, a sum of Rs.20,000/- and Rs.10,000/- is awarded under the heads 'loss of income during treatment' and 'attender charges'. The compensation awarded under the other heads is hereby confirmed.

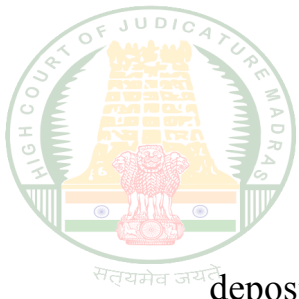


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11. In the light of the above discussion, this Court modifies the compensation in the following manner:

Sl. No.	Compensation awarded under the head	Awarded by Tribunal	Awarded by this Court
		Amount (in Rs.)	
1.	Disability	Rs.13,54,752/-	Rs.1,68,000/-
2.	Pain and Suffering	Rs.25,000/-	Rs.40,000/-
3.	Future Medical Expenses	Rs.20,000/-	Rs.20,000/-
4.	Loss of Amenities	Rs.15,000/-	-
5.	Mental Agony	Rs.10,000/-	-
6.	Nutrition	Rs.5,000/-	Rs.25,000/-
7.	Transport	Rs.3,000/-	Rs.10,000/-
8.	Medical Bills	Rs.3,46,404/-	Rs.3,46,404/-
9.	Loss of income during treatment	-	Rs.20,000/-
10.	Attender Charges	-	Rs.10,000/-
	Total	Rs.17,79,156/-	Rs.6,39,404/-
	Rounded off to	Rs.17,79,000/-	

12. The compensation awarded by the Tribunal at Rs.17,79,000/- is reduced to Rs.6,39,404/-. The appellant insurance company is directed to deposit the reduced compensation, less the amount if any already



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deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. Further, the Tribunal has ordered for pay and recovery and the same is hereby confirmed.

13. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

05.12.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

ssb

To

The Motor Accident Claims Tribunal,
Principal Subordinate Court, Tiruppur.



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M.DHANDAPANI, J.

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