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C.M.A.No.1131 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1131 of 2024

A. Arun

... Appellant

..Vs..

1. Chikkanna

2. M/s. MAGMA HDI General Insurance Company Limited

Having its policy service office at Navin Presidium,
3rd Floor, N.M. Road, New No.17/19, Old No.103,
B-Block, 3A, Nelson Manikam Road,
Chennai 600 029.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 19.12.2023, passed by the Additional District Judge, Motor Accident Claims Tribunal, Hosur, in M.C.O.P.No.292 of 2020.

For Appellant : Mr.K. Sudhakar

For R2 : Mrs. R. Sree Vidhya

JUDGMENT

The appellant is the claimant in M.C.O.P.No.292 of 2020 on the file of the Additional District Court, Motor Accident Claims Tribunal, Hosur, and he filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.75,00,000/- for the injuries



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sustained by him, in a road accident that took place on 27.12.2019.

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2. The case of the appellant/claimant is that on 27.12.2019, at about 10.30 p.m., he was riding his Honda Unicorn motor cycle bearing Registration No. TN 24 S 2480 on Denkanikottai-Hosur Road and when he was nearing Om Sakthi Temple on the same Road, another two wheeler Bajai Pulsar bike bearing Registration No. TN 70 AC 6039, owned by the first respondent, came in the opposite direction and hit him, as a result of which, he fell down and sustained injuries all over his body. He was immediately rushed to the Government hospital where he took first Aid and subsequently got himself admitted in Sparsh Hospital, Hosur.

2.1. According to the claimant, the rash and negligent driving of the driver of the two wheeler bearing Registration No. TN 70 AC 6039 was the cause of the accident and that since the said vehicle was insured with the second respondent, the MAGMA HDI General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

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



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Vehicles Act.

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4. The Tribunal, after analysing the evidence on record, fixed the negligence on the part of the offending vehicle bearing Registration No. TN 70 AC 6039 and that of the present claimant in the ratio 90:10 and directed the second respondent to pay a compensation of 2,70,391/- 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.

5. 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, 1988.

6. Heard Mr.K. Sudhakar, learned counsel for the appellant and Mrs.R.Sreevidhya, learned counsel for the second respondent.

7. Mr.K. Sudhakar, learned counsel for the appellant contended that the appellant/claimant was working as a Senior Engineer in India Nippon Electricals Limited, Uliveeranapalli, earning a sum of Rs.43,825/- per month, but, the Tribunal had fixed the monthly income of the claimant



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only as Rs.25,732/-. He also contended that the award under the other heads are also meagre. He therefore, prayed for enhancement of compensation.

8. Per contra, Mrs.R. Sreevidhya, 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. According to the claimant he was working as a Senior Engineer in India Nippon Electricals Limited and his monthly salary on the date of accident was Rs.43,825/-. In order to substantiate the same, he adduced his salary slip (Ex.P12) for the month of November 2019. The claimant during the course of cross examination contended that he quit his job and had joined another private concern where he is receiving a monthly salary of Rs.1,00,000/-. However, the Tribunal had taken up his net pay of Rs.25,732/- as his monthly income. Therefore, the monthly income of the claimant is fixed at Rs.40,000/-. The claimant had sustained crush injuries on his right leg. His big toe and second toe were



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amputated. He also sustained right femur shaft fracture. A perusal of the disability certificate and the medical records shows that the claimant would have been out of action atleast for three months on account of the injuries sustained by him in the road accident and therefore the loss of income has to be computed for three months. The enhanced amount under the different heads are detailed hereunder:

S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability	2,25,000/-	2,25,000/-
2.	Medical Expenses	2,971/-	2,971/-
3.	Future medical expenses	5,000/-	5,000/-
4.	Pain and sufferings	5,000/-	10,000/-
5.	loss of amenities	5,000/-	5,000/-
6.	Extra nourishment	2,000/-	5,000/-
7.	Transportation charges	2,000/-	5,000/-
8.	Attender's charges	2,000/-	5,000/-
9.	Loss of income	51,464/- (for 2 months x Rs.25,732/-	1,20,000/- (for 3 months x Rs.40,000/-)



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S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
	TOTAL	3,00,435/-	3,82,971/- Rounded off to 3,83,000/-
	Less :10% contributory negligence	30,044/-	38,300/-
	compensation	2,70,391/-	3,44,700/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,70,391/- to Rs.3,44,700/-. As regards the interest, the claimant is entitled to get 7.5% per annum for Rs.3,39,700/- and no interest is granted for Rs.5,000/- (future medical expenses).

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,70,391/- to Rs.3,44,700/-.



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(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, the MAGMA HDI General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.3,44,700/- (less the amount already deposited) together with interest at the rate of 7.5% per annum for Rs.3,39,700/- from the date of claim petition till the date of deposit to the credit of MCOP.No.292 of 2020 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur, 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 withdraw the same after following due process of law.

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Index : Yes/No

Internet : Yes/No



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To

1. The Additional District Judge, Motor Accident Claims Tribunal, Hosur.
2. M/s. MAGMA HDI General Insurance Company Limited
Having its policy service office at Navin Presidium,
3rd Floor, N.M. Road, New No.17/19, Old No.103,
B-Block, 3A, Nelson Manikam Road,
Chennai 600 029.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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