



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2272 of 2021

V. Pachaiyappan

.. Appellant

Versus

1. I.Sekar

2. United India Insurance Co Ltd.
Silingi Building,
New No.134, Old No.40-45,
Greens Road, Chennai - 600006.

.. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2019 made in M.C.O.P.No.2142 of 2016 on the file of the Motor Accident Claims Tribunal/ II Judge, Court of Small Causes, Chennai.

For Appellant : Smt.Ramya V.Rao

For Respondents : Mr.R.Sankaranarayanan,

For R2.

R1 - No appearance.



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JUDGMENT

This civil miscellaneous appeal has been preferred by the claimant against the award passed in M.C.O.P.No.2142 of 2016 on the file of the MACT/II Judge, Court of Small Causes, Chennai dated 16.09.2019 for enhancement.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T Rules claiming a compensation of Rs.25,00,000/- for the injuries suffered by the claimant in a road accident.

3. The Tribunal after considering the evidence, has passed an award for a sum of Rs.6,52,821/- with interest at the rate of 7.5% per annum from the date of numbering of the petition i.e., 01.04.2016, till the date of realization. The Tribunal directed the 2nd respondent/Insurance Company to pay the said compensation on behalf of the first respondent/owner cum rider of the vehicle.

4. Smt.Ramya V. Rao., learned counsel appearing for the claimant



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strenuously argued that the injured suffered serious injuries and to assess the disability, Dr.R.Amarnath R.Sowlee and Mr.R.Rajappa, who were examined as P.W.2 & P.W.3, have assessed the disability percentage at 50% (30% + 20%): The Tribunal, considering the nature of fracture and injuries suffered by the claimant should have accepted the disability assessed by the doctors in toto, instead of reducing the same to 35%. The claimant is an agricultural coolie. Due to the accident, he is not in a position to do the coolie work and for loss of earning power, multiplier method may be invoked. It is also further argued that the loss of income was only granted for eight months, but he was under treatment for almost a year. The amount granted for loss of amenities is also meagre.

5. Per contra, Mr.R.Sankara Narayanan, the learned counsel appearing for the second respondent/Insurance Company vehemently contended that the Tribunal after taking into account the evidence of P.W.1 to P.W.3 coupled with medical records has granted compensation of Rs.6,52,821/-, which is reasonable and the same requires no interference.



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6. Smt.Ramya V.Rao, the learned counsel for the appellant submitted that it is borne out by records and through the evidence of P.W.1 that on 07.11.2015 at about 10.30 a.m., the claimant, while traveling as a pillion rider in the Motor Cycle bearing Reg.No.TN-19-L-2754 along ECR Salai opposite to Tamil Nadu Mercantile Bank, Pondicherry, the rider of the above said motorcycle was driving it in a rash and negligent manner endangering public safety and hit another motorcycle bearing No.PY-01-BY-1812, which came from Pondicherry to Chennai direction.

7. The Tribunal, after evaluating the evidence, concluded that due to the rash and negligent riding of the first respondent namely the rider of Motor Cycle bearing Reg.No.TN-19-L-2754, the accident occurred. The said finding was challenged by way of appeal filed by the Insurance Company in C.M.A.No.2277 of 2021.

8. It has come on record through the evidence of P.W.1, that soon after the accident, he was admitted at Global Health City Hospital on 07.11.2015 and got discharged on 09.11.2015 as per Ex.P2 - Discharge Summary. He



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suffered frontal bone depressed fracture. Elevation of frontal bone by way of surgery was done on 07.11.2015. Thereafter, he was admitted at the Specialty Hospital on 10.11.2015 and discharged on 16.11.2015. A C.T. brain scan was taken on 10.01.2015. The treatment records show that the fracture of right orbit, Cribiform plate, Nazei Septum, right maxillary sinus, ethmoidal sptac and depressed frontal bone fracture, for which he was treated with medicines.

9. It is seen from the Ex.P.5 - Discharge summary issued by the Government Hospital, Chennai, that he has taken treatment for cataract problem. P.W.2 - Dr.Amarnath R.Sowlee, Ortho Paediatrician has assessed the disability at 30% for the above said fractures. P.W.3 - Dr.R.Rajappa, has assessed disability as 20%.

10. It is the evidence of P.W.1 - Pachaiyappan that due to the fractures suffered, he is not in a position to work as agricultural coolie. As agricultural coolie, he has to walk, stand, bend and carry agricultural products. Having undergone surgery over the head, he is finding it difficult to do the agricultural coolie work as he did before. He was aged 45 years at the relevant point of



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11. Considering the evidence of P.W.1 coupled with the evidence of P.W.2 & P.W.3 and medical records, the disability of injured is fixed at 40% and Rs.4,000/- is granted for every percentage of disability. Accordingly $(40 \times \text{Rs.4,000/-}) = \text{Rs.1,60,000/-}$, is granted under the head of disability.

12. From the medical records, it is seen that the injured was admitted thrice in the hospital as an inpatient and therefore, the amount awarded by the Tribunal towards attender charges is hereby enhanced to Rs.12,000/- from Rs.3,000/-. His monthly income was fixed at Rs.10,000/- by the Tribunal and loss of income for treatment period was granted for three months. Considering the nature of injuries, Rs.40,000/- is granted loss of income for four more months in addition to the amount already granted. In all other aspects, the amounts granted by the Tribunal appears to be reasonable and needs no interference. The compensation awarded by the Tribunal is hereby reworked and tabulated as hereunder:-



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Disability	Rs.1,05,000/-	Rs.1,60,000/-	Enhanced
2	For Pain and Sufferings	Rs. 75,000/-	Rs.75,000/-	Confirmed
3	For Extra Nourishment	Rs. 50,000/-	Rs. 50,000/-	Confirmed
4	For Transport to Hospital	Rs.15,000/-	Rs.15,000/-	Confirmed
5	For Damages to Clothes	Rs.500/-	Rs.500/-	Confirmed
6	For Attender charges	Rs.3,000/-	Rs.12,000/-	Enhanced
7	Medical expenses	Rs.3,24,321/-	Rs.3,24,321/-	confirmed
8	For Future Medical expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
9	For Loss of Income	Rs.30,000/-	Rs.70,000/-	Enhanced
10	For Loss of Amenities	Rs.25,000/-	Rs.25,000/-	Confirmed
	Total	Rs.6,52,821/-	Rs.7,56,821/-	Enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,52,821/-



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is hereby enhanced to Rs.7,56,821/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2142 of 2016 on the file of the MACT/II Judge, Court of Small Causes, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

30.01.2024

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Index : Yes / No

Internet : Yes/ No

Speaking/non-speaking order

To

1. The Motor Claims Tribunal/ (II Judge, Court of Small Causes, Chennai).

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WEB CO

2. The United India Insurance Co Ltd.
Silingi Building,
New No.134, Old No.40-45,
Greens Road, Chennai - 600006.

R.KALAIMATHI, J.

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