



C.M.A.No.248 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.248 of 2021

Raja

... Appellant

Vs.

1.K.Sundararaj

2.L & T General Insurance Co Ltd.,
6th Floor City II Plot No.177
Near Bandra Kurta Telephone Exchange CST Road
Kalina Santacruz, East Mumbai
Maharastra – 400 098.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.407 of 2017 dated 12.03.2020 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.S.Kaithamalai Kumaran for R1.
Mr.K.Poomalai for R2.

JUDGMENT

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



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2. The case of the claimant is that on 03.05.2017 while the claimant was riding a two wheeler bearing Registration No.TN49-AH-2462 towards Chennimalai to Kangayam road, a motor cycle bearing registration No.TN56-B-4785 driven by the 1st respondent in the same direction, in a rash and negligent manner and hit against the claimant's vehicle. Thereby, the claimant sustained grievous injuries on his left leg and multiple injuries all over the body. Immediately, he was admitted in Government Hospital, Perundurai. Thereafter, he was shifted to Erode Ortho care Centre Hospital, Erode and subsequently admitted in Ganga Hospital, Coimbatore and taken treatment for a period of one month as inpatient. At the time of accident, the claimant was working as CISF Constable and earning a sum of Rs.25,000/-p.m. The medical board assessed 60% permanent disability by considering the nature of injury sustained by the claimant. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.11,19,282/- under various heads with interest at the rate of 7.5% per annum.

4. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. The learned counsel for the appellant submitted that the injured was aged about 30 years at the time of the accident and he was working as a Constable in CISF. Due to the accident, he is not able to continue his avocation. The medical board assessed the disability at 60% whereas the Tribunal has awarded a sum of Rs.1,80,000/- towards permanent disability which is very meager and also the Tribunal has awarded very less compensation in respect of pain and sufferings and no compensation has been awarded under the head of attender charges.



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6. The learned counsel appearing for the insurance company submitted that after considering the evidences and materials, the Tribunal has awarded compensation, which is perfectly in order and the same does not require any interference.

7. Heard the learned counsel for appellant/claimant and the learned counsel for the respondents.

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

9. This Court also carefully went through the award passed by the Tribunal.

10. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.



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11. According to the appellant, the first respondent driven the motor cycle in rash and negligent manner and dashed against the appellant and thereby, he sustained multiple grievous injuries. It is the main ground of the appellant that the Tribunal has awarded a very meager amount in respect of permanent disability, pain and sufferings and no award has been passed under the head of attender charges. At the time of accident, the appellant is aged about 30 years and he was working as a CISF Constable and earning a sum of Rs.25,000/- p.m. A sum of Rs.5,29,696/- has been awarded under the head loss of earning capacity. Towards the same, a tabulated statement showing the nature of leave sanctioned by the employer is placed before this Court. Of the said leave, barring 53 days, about 560 days of leave have either been sanctioned under the head 'EOL' and 'Dies Non'. It is to be pointed out that 'EOL' is extraordinary leave, which is sanctioned on loss of pay and 'Dies Non' is a period, which is treated to be a period during which the claimant has not been under the work of the employer. Therefore, under those heads, the claimant would not have been paid any salary and rightly appreciating the aforesaid factors, the Court below has awarded a sum of Rs.5,29,695/-. Though it is submitted by the learned



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counsel for the insurer that the amount under the aforesaid head is on the higher side, however, it is to be pointed out that no appeal has been filed by the insurer questioning the compensation whereas the present appeal has been filed by the claimant seeking enhancement of compensation. Considering the fact that no appeal has been filed by the insurer, this Court is not inclined to reduce the compensation awarded under the head 'Loss of Earning Capacity' and, accordingly, the amount of Rs.5,29,695/- awarded under the said head is confirmed.

12. The claimant has suffered permanent disability of 60%, which is not disputed. The Tribunal has awarded a sum of Rs.3,000/- per percentage of disability. Though this amount is on the lower side, however considering the fact that compensation has been awarded under the head 'Loss of Earning Capacity to an extent of Rs.5,29,695/-, this Court is not inclined to enhance the compensation under this head. The amount awarded under the other heads is just and reasonable and the same does not warrant interference by this Court.



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13. For the reason aforesaid, this appeal is dismissed.

The second respondent Insurance company is directed to deposit the entire compensation, less the amount, if any, 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. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

14. In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

26.11.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
msv

To
The Motor Accidents Claims Tribunal,
Subordinate Judge, Perundurai.



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