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CMA NOS.2398 AND 3268 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 07 / 06 / 2024

JUDGMENT DELIVERED ON: 02 / 07 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NOS.2398 AND 3268 OF 2021

AND

CMP NO.18571 OF 2021 IN CMA NO.3268 OF 2021

CMA NO.2398 OF 2021

M.Gowthaman

... Appellant /
Petitioner

Vs.

1.T.N.Murali

... 1st Respondent /
1st Respondent

2.HDFC ERGO General Insurance Company Ltd.

New No.528, Old No.559, 2nd Floor,
Anna Salai, Teynampet,
Chennai – 600 018.

... 2nd Respondent /
2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 18.08.2020 made in M.C.O.P.No.1610 of 2016 on the file of the Motor Accident Claims Tribunal in the II Court of Small Causes, Chennai and praying to enhance the award amount by allowing the Civil Miscellaneous Appeal.



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For Appellant : Mr.F.Terry Chella Raja

For Respondent -1 : *Ex parte*

For Respondent-2 : Mr.S.Arunkumar

CMA NO.3268 OF 2021

M/s.HDFC ERGO General Insurance Co. Ltd.,
Old No.559, New No.528, 2nd Floor,
Anna Salai, Teynampet,
Chennai – 600 018.

... Appellant /
2nd Respondent

Vs.

1.M.Gowtham

... 1st Respondent /
Petitioner

2.T.N.Murali

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 18.08.2020 made in M.C.O.P.No.1610 of 2016 on the file of the Motor Accident Claims Tribunal in the II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondent - 1: Mr.F.Terry Chella Raja

For Respondent - 2: *Ex parte*



COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved with the compensation awarded by 'the Motor Accident Claims Tribunal (II Court of Small Causes) Chennai ('Tribunal' for short) vide its order of award dated August 18, 2020, made in M.C.O.P.No.1610 of 2016, the petitioner has preferred C.M.A.No.2398 of 2021 praying to set aside the above Award and enhance the compensation.

2.On the other hand, challenging the quantum of compensation awarded by the Tribunal vide the order of award dated August 18, 2020 made in M.C.O.P.No.1610 of 2016, the 2nd respondent therein has preferred CMA No. 3268 of 2021 praying to set aside the same and reduce the quantum of compensation.

3.For the sake of convenience, the parties in these appeals will be referred to as per their array in the Claim Petition before the Tribunal.

Facts in brief:

4.On August 26, 2015 at about 10.50 hours, while the petitioner–M.Gowtham was riding his Motorcycle bearing Registration



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No.TN19-L-8836, on the left side of Tambaram to Chengalpattu G.S.T.

Road, while nearing Kelakaranai Junction, a Car bearing Registration No.TN02-AK-5125, belonging to the first respondent, driven by its Driver in a rash and negligent manner, hit behind the petitioner's Motorcycle. Due to the said accident, the petitioner sustained grievous injuries resulting in permanent disability. Hence, the petitioner filed a Claim Petition before the Tribunal claiming a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) as compensation from the respondents under various heads.

5.The second respondent – HDFC ERGO General Insurance Co. Ltd., filed a counter stating that the petitioner was not wearing Helmet at the time of accident and thus, the petitioner was also responsible for the accident. Further, the injuries and disability are being exaggerated in the Claim Petition and thus, it sought for dismissal the Claim Petition.

6.Before the Tribunal, the petitioner examined himself as P.W.1, his father V.Murugan was examined as P.W.2 and Ex-P.1 to Ex-P.20 were marked. On the side of the second respondent–Insurance Company, neither witnesses were examined nor documents were marked. Disability Certificates issued by the Medical Board were marked as Ex-C.1 and Ex-C.2.



7.The Motor Accident Claims Tribunal after analysing the oral

and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the first respondent's car. Since the first respondent's Car was insured with the second respondent – Insurance Company and the insurance policy was in force on the date of accident, the Tribunal held that the second respondent – Insurance Company is liable to pay compensation to the petitioner and accordingly, awarded compensation as hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Functional Disability	Rs.44,06,400.00
2	Pain and Suffering	Rs.2,00,000.00
3	Extra nourishment	Rs.75,000.00
4	Transport to Hospital	Rs.50,000.00
5	Damages to clothes	Rs.1,000.00
6	Attender charges	Rs.5,800.00
7	Medical expenses	Rs.7,55,114.00
8	Future Medical expenses	Rs.2,00,000.00
9	Loss of Income	Rs.1,02,000.00
10	Loss of Amenities	Rs.1,00,000.00
	Total	Rs.58,95,314.00
	Rounded off to	Rs.58,95,400.00

8.The first respondent – T.N.Murali is the owner of the Car



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and he remained *ex-parte* before the Tribunal. Hence, notice to first respondent in these Civil Miscellaneous Appeals was dispensed with.

9. Not satisfied with the compensation awarded by the Tribunal, the petitioner has filed CMA No.2398 of 2021 praying to enhance the compensation.

Likewise, challenging the quantum of compensation arrived at by the Tribunal, the second respondent – Insurance Company has filed CMA No.3268 of 2021 praying to set aside the Award.

10. This Court has heard the submissions made on either side and perused the materials available on record.

11. The learned counsel for the appellant/petitioner has submitted that at the time of accident, the petitioner was 22 years old and was earning a sum of Rs.17,000/- per month. The Medical Board fixed 90% disability. But the Tribunal, without assigning any reasons, has taken disability at 80%. Further, the Tribunal failed to note that the petitioner was intubated and mechanically ventilated because of the spinal cord C7-D1 flexion distraction injury sustained by the petitioner. The Tribunal, ought to have awarded compensation under the head 'loss of expectation of life and mental agony' and ought to have awarded just compensation to the



petitioner. Accordingly, he prayed to enhance the award amount.

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12.Per contra, learned counsel for the second respondent – Insurance Company has submitted that the Tribunal believed the evidence of P.W.2 who issued Salary Certificate to the petitioner to the effect that the petitioner was earning a sum of Rs.17,000/- per month failing to consider the fact that P.W.2 is none other than the father of the petitioner. Further, the Tribunal erred in granting 50% towards future prospects and interest thereof, without considering the fact that the alleged avocation and income therefrom are doubtful. Further, the Tribunal wrongly awarded a sum of Rs.1,02,000/- towards loss of income, Rs.1,00,000/- towards loss of amenities and Rs.75,000/- towards extra nourishment without any basis for the same. Accordingly, he prayed to reduce and modify the award amount.

13.This Court has considered the submissions made on either side. The main point that arises for consideration in both the Civil Miscellaneous Appeals is the quantum of compensation.



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14. On August 26, 2015 at about 10.50 hours, while the petitioner – M.Gowtham was riding his Motorcycle bearing Registration No.TN19-L-8836 on the left side of Tambaram to Chengalpattu G.S.T. Road, while nearing Kelakaranai Junction, first respondent's car bearing Registration No.TN02-AK-5125, driven by its Driver in a rash and negligent manner, hit behind the petitioner's Motorcycle, due to which, the petitioner sustained grievous injuries. Accordingly, he filed a Claim Petition before the Tribunal claiming a compensation of Rs.25,00,000/- from the respondents.

15. The petitioner, who was examined as P.W.1 has deposed that after the accident, initially he was taken to S.R.M. Medical College Hospital, Potheri, Kancheepuram District. On the same day viz., August 26, 2015, he was shifted to Global Hospital, Perumbakkam, Chennai wherein he was treated as inpatient for 21 days from August 26, 2015 to September 15, 2015. In the interregnum, he underwent surgery on August 29, 2015 in his Spine whereby a plate was inserted in his back. He was discharged from Global Hospital on September 15, 2015 and on the same day itself, he was admitted to Deepam Hospital, Chromepet, Chennai where he obtained treatment as in-patient till September 23, 2015 i.e., for 9



days. Thereafter, he continued the treatment as out-patient. He further deposed that before the accident, he was working as a Supervisor in M/s.Sri Durgai Amman Catering Service, Maraimalai Nagar, Kancheepuram District and earned a sum of Rs.17,000/- per month. He further deposed that at the time of accident, he was 23 years old. Due to the accident, he cannot stand or sit or even attend nature's call, without the help of others. Thus, he lost 100% earning capacity.

16.P.W.2 who is none other than the father of P.W.1 has deposed along the same line. P.W.2 further deposed that he was running a Catering Service and the petitioner was working as a Supervisor therein. To prove the same, he exhibited Ex-P.14 to Ex-P.20 documents, namely Salary Certificate, Certificate of Registration under Section 69 of the Finance Act, 1994, Registration Certificate issued under Food Safety and Standards Act, 2006, SSI – Tiny Certificate issued by Department of Industries and Commerce for running 'food processing unit', Central Board of Excise and Customs Registration Certificate, TDS Registration Certificate and GST Registration Certificate.

17.It is evident from Ex-P.15 to Ex-P.20 that P.W.2 was running a Catering Service and P.W.1 was working as a Supervisor therein.



Since P.W.2 was running Catering Service, the petitioner's contribution to P.W.2's business is obvious. Hence, the finding of the Tribunal that the petitioner was earning a sum of Rs.17,000/- per month is reasonable and this Court is inclined to accept the said finding.

18.As far as disability is concerned, the Medical Board found that the petitioner had suffered 90% disability and stated that the disability is temporary. The Tribunal, after evaluating the evidence of P.W.1 and P.W.2 came to the conclusion that the petitioner suffered 80% permanent disability. The Tribunal had the opportunity to see the petitioner and watch him. A conjoint reading of evidence of P.W.1 and P.W.2 and Ex-C.1 would show that the petitioner suffered 80% permanent disability. Hence, the Tribunal rightly applied the multiplier method and arrived at the compensation as stated *supra*.

19.The Tribunal has rightly taken the monthly salary of Rs.17,000/-, but wrongly applied 50% future prospects. The petitioner was self employed and aged 22 years at the time of accident. Hence, as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others [2017 (16) SCC 680]*** 40% shall be fixed as future prospects.



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20.The Tribunal awarded a sum of Rs.2,00,000/- under the head pain and suffering; Rs.75,000/- towards extra nourishment; Rs.50,000/- towards transportation to hospital; Rs.7,55,114/- towards medical expenses; Rs.2,00,000/- towards future medical expenses; Rs.1,02,000/- towards loss of income and Rs.1,00,000/- towards loss of amenities. This Court is of the view that awarding a sum of Rs.1,02,000/- under the head loss of income would not be justifiable in this case since the compensation has arrived at using the multiplier method. Further, this Court is of the view that awarding a sum of Rs.75,000/- under the head 'extra nourishment' is on higher side. Hence, this Court is of the view that a sum of Rs.50,000/- would be a reasonable compensation under the above head. In view of the evidence of P.W.2, the Tribunal did not award attender charges. Considering the nature of the injuries, this Court is of the view that throughout the petitioner's life one Attender is necessary to take care of him and to fulfil his day today needs. Hence, at least, a sum of Rs.2,000/- per month shall have to be awarded under the said head. The Award is re-worked as under:



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Sl.No.	Head	Amount
1	Functional Disability [Rs.17,000/- + 6800 (40%) X 12 X 18 X 80/100]	Rs.41,12,640.00
2	Pain and Suffering	Rs.2,00,000.00
3	Extra nourishment	Rs.50,000.00
4	Transport to Hospital	Rs.50,000.00
5	Damages to clothes	Rs.1,000.00
6	Attender charges	Rs.5,800.00
7	Future Attender charges (Rs.2,000 X 12 X 18)	Rs.4,32,000.00
7	Medical expenses	Rs.7,55,114.00
8	Future Medical expenses	Rs.2,00,000.00
9	Loss of Amenities	Rs.1,00,000.00
	Total	Rs.59,06,554.00

21.Considering the facts and circumstances of the case and since the Award passed by the Tribunal as well as the compensation re-worked by this Court is more or less similar, this Court is of the view that there is no need to alter or modify the award amount.

22.For the above reasons, this Court does not find any merit in both these Civil Miscellaneous Appeals and accordingly, both these Civil Miscellaneous Appeals are dismissed. The Award dated August 18, 2020



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passed in M.C.O.P.No.1610 of 2016 by the Tribunal is hereby confirmed.

No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

02 / 07 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Motor Accident Claims Tribunal
(II Court of Small Causes)
Chennai.



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CMA NOS.2398 AND 3268 OF 2021

R.SUBRAMANIAN, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.2398 AND 3268 OF 2021

02 / 07 / 2024