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CMA.No.2733 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2733 of 2022

S.Parthasarathy

Appellant

Vs

1. M.Viswanathan

2. The Oriental Insurance Company Limited
Motor Third Party Hub, Chennai-1

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.10.2021, made in MCOP.No.3609 of 2017, by the II Judge, Court of Small Causes (MACT) Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.N.Sampath-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, challenging the quantum of compensation, awarded by the judgement and decree, dated, 05.10.2021, made in MCOP.No.3609 of 2017, by the II Judge, Court of Small Causes (MACT) Chennai.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.25,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 15.03.2017. The 1st Respondent herein/owner of the offending vehicle remained exparte. The



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claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimant, PW.1 was examined and Ex.P1 to Ex.P7 were marked. Ex.C1 was marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending two wheeler belonged to the 1st Respondent and insured with the 2nd Respondent Insurance Company, the Tribunal has awarded a total compensation of Rs.1,34,525/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the 2nd Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability (10%x5000)	50000
2	Loss of Income	12525
3	Attendants Charges	12000
4	Pain and Suffering	50000
5	Extra Nourishment	5000
6	Transportation Expenses	5000
Total Compensation		134525

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel for the Appellant and the contesting Respondent, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the manner, in which the accident had occurred, negligence and liability aspects as well as the injuries suffered by



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the claimant and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal with respect to the manner of the accident, negligence and liability aspects and the injuries sustained by the claimant are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellant, at the time of the accident, the claimant was earning a sum of Rs.15,000/- p.m. as a Security in a Private Company and the accident had occurred in the year 2017 and due to the accident, the claimant sustained fracture on tibia bone and hence, the compensation of Rs.5000/- per percentage of disability fixed by the Tribunal appears to be on the lower side and due to the injury, the claimant took treatment for two months, but the Tribunal has awarded loss of income only for a month. The Tribunal, while arriving at the compensation for the disability suffered by the claimant, ought to have applied the multiplier method and the compensation amounts awarded under other heads are also on the lower side and hence, they have to be redetermined and enhanced.
7. On the other hand, the learned counsel for the 2nd Respondent Insurance Company would submit that the impugned compensation is just and reasonable and hence, it need not be enhanced.
8. On a perusal of the entire evidence, it is seen that the claimant sustained fracture on tibia bone. The Tribunal has arrived at the percentage of disability at 10%, which appears to be in commensurate with the injuries suffered by



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the claimant. Considering the nature of injuries, this Court is not inclined to apply the multiplier method.

9. In so far as the fixation of notional monthly income is concerned, the Tribunal, considering the rate of inflation index prevailed at the relevant point of time, fixed the notional monthly income of the claimant at Rs.12,525/-, which appears to be just and reasonable. However, fixation of compensation per percentage of disability at Rs.5000/- by the Tribunal is not proper, considering the year of the accident, i.e. 2017 and the inflation index and hence, it would be appropriate to fix Rs.7,000/- per percentage of disability. Thus, the compensation towards permanent disability is redetermined at Rs.70,000/- (10 x Rs.7,000).

10. Considering the nature of injuries, the claimant would not have gone for his avocation for at least two months, but the Tribunal has awarded compensation for loss of income only for a month, which is not proper. Hence, the compensation towards loss of income for two months would come to Rs.25,050/-. The compensation amounts awarded under other heads are just and reasonable and hence, they are confirmed. In all, the claimant is entitled to a total compensation of Rs.1,67,050/- with interest 7.5% p.a. from the date of the claim petition till the date of realisation.

11. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.1,67,050/-, (Rupees one lakh sixty seven thousand fifty only) with interest 7.5% p.a. from the date of the claim



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petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Disability (10%x7000)	70000
2	Loss of Income for two months	25050
3	Attendants Charges	12000
4	Pain and Suffering	50000
5	Extra Nourishment	5000
6	Transportation Expenses	5000
Total Compensation		167050

The claimant shall pay proper court fee for the enhanced compensation amount. The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeal if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the entire compensation amount, with interest due, directly to the bank account of the claimant, within a period of three weeks thereafter. No costs.

28.02.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Neutral Citation

Srcm

To

1. The II Judge, Court of Small Causes (MACT) Chennai
2. The Record Keeper, VR Section, High Court, Madras



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KRISHNAN RAMASAMY, J.

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