IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2561 of 2023

Venu

... Appellant

Vs.

1. Mrs.Kurinchi Pachamuthu

2. The Branch Manager,
   National Insurance Co Limited
   Branch Office,
   No.88-F, Bye pass Road,
   Dharmapuri – 636 701 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 12.04.2022 in MCOP No.388 of 2019 on the file of Motor Vehicle Accident Claims Tribunal and Special Sub Court, Krishnagiri, Krishnagiri District.

For Appellant : Mr.E.Kannadasan

For Respondents : Mr.C.Johnson for R2

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JUDGMENT

The present appeal has been filed by the claimant not being satisfied with the quantum of compensation awarded by the Motor Vehicle Accident Claims Tribunal and Special Sub Court, Krishnagiri, Krishnagiri District in MCOP No.388 of 2019 dated 12.04.2022.

2. The case of the claimant is that on 10.02.2019, he was travelling in a two wheeler along with his friend at Hosur to Bangalore Service road and at about 00.50 hours midnight, the offending vehicle which was a lorry and which belonged to the 1st respondent was driven in a rash and negligent manner and it hit the two wheeler. As a result of which, the claimant fell down and sustained crush avulsion injury right axilla and shoulder. The claimant underwent treatment as an in patient for nearly 8 days. The medical board assessed the disability of the claimant at 45%. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

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 driver of the offending vehicle. Having rendered such a finding, the Tribunal took into consideration the fact that there was no subsisting insurance policy, since the cheque that was given towards premium on 28.03.2018, was dishonoured. Hence, the policy was cancelled and it was informed to the owner of the vehicle. Information was also sent to the RTO, Dharmapuri and it was received. Therefore, the Tribunal came to a conclusion that the insurance company cannot be made liable to pay the compensation and that the compensation should be paid only by the 1st respondent.

4. The Tribunal thereafter proceeded to fix the total compensation at Rs.5,69,573/- under various heads as follows :-

Sl.No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of Disability (45 x 5000= Rs.2,25,000)	Rs.2,25,000/-
2.	Transportation expenses	Rs.12,000/-
3.	Extra Nourishment	Rs.18,000/-

4.	Pain and sufferings	Rs.36,000/-
5.	Social amenities	Rs.36,000/-
6.	Loss of income (1 x Rs.9,000)	Rs.9,000/-
7.	Damages to clothes	Rs.1,500/-
8.	Medical expenses	Rs.2,32,073/-
	Total	**Rs.5,69,573/-**

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal and exonerating the insurance company from paying the compensation, has filed the present appeal before this Court.

6. Heard Mr.E.Kannadasan, learned counsel for appellant /claimant and Mr.C.Johnson, learned counsel for 2nd respondent /Insurance company.

7. This Court has carefully considered the submissions made

on either side and the materials available on record.

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

9. The first issue is with regard to exonerating the insurance company from paying the compensation amount. In the instant case, the accident had taken place on 10.02.2019. The 1st respondent has paid the premium amount by way of a cheque marked as Ex.P4 on 28.03.2018. This cheque was dishonoured and hence, the policy was canceled by the Insurance company. The intimation regarding the cancellation of the policy was marked as Ex.R6. This notice that was sent to the 1st respondent was returned with an endorsement “unclaimed”. The same was marked as Ex.R7. The intimation was sent to the RTO, Dharmapuri, through Ex.R5 letter and it was received by the RTO and the policy was cancelled, which is evident from R8. In view of the same, as on the date of accident, there was no subsisting insurance policy. Therefore, the

Tribunal rightly exonerated the insurance company from paying the compensation amount. This finding of the Tribunal does not suffer from any illegality and the same is hereby sustained.

10. The next issue is with regard to the quantum of compensation fixed by the Tribunal. The learned counsel for appellant submitted that the claimant in this case was a B.Com graduate, who was working in a finance company and was earning a sum of Rs.30,000/- per month. Due to the injuries sustained by him, it has resulted in functional disability. Therefore, it was contended that the Tribunal ought to have applied the multiplier method.

11. There was absolutely no evidence before the Tribunal to substantiate that the claimant had suffered from any functional disability in this case. The avocation of the claimant will not be affected due to the injury sustained by the claimant. Therefore, the Tribunal had rightly applied the per percentage method.

12. The accident in this case had taken place in the year 2019. But however the Tribunal had fixed only a sum of Rs.5,000/- per percentage, which is on the lower side. Considering the judgement of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022, Rs.7,000/- has to be fixed per percentage. Thus, the compensation under the head of loss of disability is fixed at Rs.3,15,000/- (45 x 7000).

13. Insofar as the loss of income is concerned, the Tribunal has fixed only Rs.9,000/-. Considering the occupation of the claimant, this Court is inclined to enhance the same to Rs.30,000/- (Rs.15,000 x 2 months).

14. Insofar as the compensation that has been fixed under the other heads, the same is reasonable and it does not require the interference of this Court.

15. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following terms :-

Sl.No.	*Compensation awarded under the head*	*Amount (in Rs.)*
1.	Loss of Disability (45 x 7000= Rs.3,15,000)	Rs.3,15,000/-
2.	Transportation expenses	Rs.12,000/-
3.	Extra Nourishment	Rs.18,000/-
4.	Pain and sufferings	Rs.36,000/-
5.	Social amenities	Rs.36,000/-
6.	Loss of income (2 x Rs.15,000)	Rs.30,000/-
7.	Damages to clothes	Rs.1,500/-
8.	Medical expenses	Rs.2,32,073/-
	Total	**Rs.6,80,573/-**

16. The compensation awarded by the Tribunal at Rs.5,69,573/- is enhanced to Rs.6,80,573/-. The 1st respondent is directed to deposit the enhanced compensation, less the amount 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 six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,11,000/- is concerned, the appellant/claimant will not be entitled for interest for the

period of delay of 323 days as was ordered by this Court in C.M.P.No.14806 of 2023, dated 07.09.2023. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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

09.07.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH.,J
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To,

Motor Vehicle Accident Claims Tribunal and Special Sub Court, Krishnagiri, Krishnagiri District.

Civil Miscellaneous Appeal No.2561 of 2023

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