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C.M.A.No.2981 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2981 of 2021

Palani

..Appellant/ Petitioner

Vs.

1.Thufail Ahamed

2.The United India Insurance Company Ltd.,

No.2, Bhuvaneswari Complex,

Dr.Sankaran Road,

Namakkal Town & District.

..Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying for enhancement of compensation in the judgment and decree dated 10.12.2019 passed in MCOP.No.1193 of 2018 on the file of the Motor Accident Claims Tribunal/ Principal District Court, Namakkal.

For Petitioner : Mr.MA.P.Thangavel

For Respondents : Mr.J.Chandran for R2

R1 – No appearance



C.M.A.No.2981 of 2021

J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of the compensation awarded by the Judgment and Decree passed in M.A.C.T.O.P. No.1193 of 2018, dated 10.12.2019 on the file of the Motor Accident Claims Tribunal/ Principal District Court, Namakkal.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 17.04.2018 at about 2.00 p.m. while he was riding his two wheeler bearing Reg.No.TN-88-Z-2057 on the Kolaram to Karichipalayam Road, Namakkal, a bus bearing Reg.No.TN-88-B-7601 was coming from the opposite direction in a rash and negligent manner and dashed against the two wheeler of the claimant and caused the accident. Due to the said accident the claimant sustained grievous injuries, for which he has come forward with a claim petition seeking compensation of a sum of Rs.4,00,000/- along with interest under section 166 of Motor Vehicles Act, 1988.



C.M.A.No.2981 of 2021

4. The first respondent, who is the owner of the bus bearing Reg.No.TN-88-B-7601 has not contested the claim and remained *ex parte* before the Tribunal. The second respondent - Insurance Company, who is the insurer of the first respondent bus has filed a counter and denied the manner in which the accident has taken place and also disputed the age, avocation, income and the disability of the claimant. The Insurance Company also contended that the accident was taken place due to the negligence on the part of the claimant. The Insurance Company also contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant was examined as PW1 and one Dr.S.T.Shiyamsundar was examined as PW2. Exs.P1 to P12 were marked on the side of the claimant. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. The Tribunal after considering the evidence placed on record has



C.M.A.No.2981 of 2021

accepted the case of the claimant that the 1st respondent driver is the tort-feaser and that due to his tortious act the claimant sustained grievous injuries and awarded a compensation of Rs. 86,293/- with interest at 7.5% per annum from the date of the petition till date of realisation.

7. Aggrieved over the compensation awarded by the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the compensation awarded under the head disability is on the lower side. The Claimant has sustained right leg fibula fracture and the Doctor has assessed the disability of the claimant at 10% and that no compensation has been awarded under the head, Attender charges, loss of amenities and pain and sufferings. Hence, he seeks for enhancement of the compensation awarded by the Tribunal.

9. Contending contra, the learned counsel appearing for the Insurance Company has submitted that the claimant has sustained



C.M.A.No.2981 of 2021

fracture, which has been treated conservatively and no surgery has been conducted. Based on the medical records and the nature of the injury, the Tribunal has awarded just and fair compensation and seeks to confirm the compensation awarded by the Tribunal.

10. I have considered the rival submissions. The medical records of the claimant shows that he has sustained fracture on the right leg below the knee level (fibula) and his disability was assessed at 10% by a Private Doctor. The Tribunal after accepting the disability assessed by the Doctor awarded the loss of income at Rs.3,000/- per percentage of disability.

11. The learned counsel for the petitioner has relied upon the Division Bench judgment of this Court in ***Future General India Insurance Company Limited Vs. Manivanna and 2 others*** made in ***CMA.No.3334 of 2021*** dated ***15.06.2022***, wherein the Division Bench has held that an award of compensation of Rs.7,000/- per percentage of disability would be appropriate to the case therein.



C.M.A.No.2981 of 2021

12. This Court consistently following the case in *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, wherein, the compensation for the non-functional injuries caused from the year 2016 onwards the compensation per percentage of disability is awarded at Rs.5,000/-, and so far, the same is not increased by this Court. The Division Bench in *Future General India Insurance Company Limited Vs. Manivanna and 2 others (supra)* had an occasion to consider the case of injury wherein the Tribunal has awarded a compensation by adopting multiplier method. It was challenged by the Insurance Company before this Court and the Division Bench has held that the application of multiplier method is not proper and has come forward to award compensation at Rs.7,000/- per percentage of disability. It is also stated by the Division Bench that the injured has sustained 55% of disability which was assessed by the Medical Board.

13. Whereas in the case on hand, the injury sustained by the



C.M.A.No.2981 of 2021

claimant herein is a fracture on the fibula which is also healed well and the treatment undergone by him is also a conservative treatment. Hence, the claimant could not be equated with the case considered by the Division Bench in *Future General India Insurance Company Limited Vs. Manivanna and 2 others (supra)*.

14. Since the accident is of the year 2018, as per the judgment in *M. Chinnathambi vs. S. Deepa and another (supra)* the claimant will be entitled to Rs.5,000/- per percentage of disability. Thus, the loss of income due to injury would be Rs.5,000/- x 10% = Rs.50,000/-. The Tribunal has not awarded any amount as compensation under the heads pain and sufferings, attender charges and loss of amenities. This Court feels that a sum of Rs.10,000/- shall be awarded towards pain and sufferings and a sum of Rs.5,000/- towards attender charges. It is also stated by the claimant in his petition that due to the injury on his leg, he is not able to walk freely and it has also caused disfigurement issues. Considering the same, the claimant is also entitled to a sum of Rs.10,000/- towards loss of amenities. As far as the other heads are concerned, the same are confirmed.



C.M.A.No.2981 of 2021

WEB COPY

15. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income due to injury	30,000/-	50,000/-	Enhanced
2.	Medical expenses	45,293/-	45,293/-	Confirmed
3.	Nature of injuries	6,000/-	6,000/-	Confirmed
3.	Nutrition	5,000/-	5,000/-	Confirmed
4.	Attender charges	--	5,000/-	Enhanced
5.	Pain and Sufferings	--	10,000/-	Enhanced
6.	Loss of amenities	--	10,000/-	Enhanced
	Total Compensation	86,293/-	1,31,293/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.86,293/- is hereby enhanced to **Rs.1,31,293/- [Rupees One Laksh Thirty One Thousand Two Hundred and Ninety Three only]** along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs,



C.M.A.No.2981 of 2021

less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of MCOP.No.1193 of 2018 on the file of the Motor Accident Claims Tribunal/ Principal District Court, Namakkal. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. There shall be no order as to costs in the present appeal.

30.01.2024

dsa
Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order/ Non-Speaking order



C.M.A.No.2981 of 2021

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1. The Motor Accident Claims Tribunal,
Principal District Court, Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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C.M.A.No.2981 of 2021

K.RAJASEKAR,J.

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C.M.A.No.2981 of 2021

30.01.2024