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CMA.No.1856 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1856 of 2024

S. Jagan

.... Appellant

vs.

1. R. Jayachandar

2. The Manager

United India Insurance Company Limited

Sillingi Building, 4th Floor,

No.134, Greams Road, Chennai.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 09.08.2023 in M.C.O.P.3588/2019 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr. K. Balaji

R1 : No appearance

For R2 : Mrs. R. Rathna Thara



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J U D G M E N T

The appellant is the claimant in M.C.O.P.3588/2019 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.14,00,000/- for the injuries sustained by him in a road accident that took place on 27.05.2019.

2. The case of the claimant is that on 27.05.2019, he was travelling as a pillion rider in a two wheeler bearing Registration Number TN 18 AF 0562, belonging to the first respondent and driven by his friend Jagannanthan, on Vandalur-Minjur bypass Road. According to the claimant, the driver of the two wheeler drove the vehicle in a rash and negligent manner and hit a stone on the left hand side of the Road, as a result of which he fell down from the two wheeler and sustained injuries all over his body. He was immediately rushed to the hospital where he was treated as an inpatient for five days.



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2.1. According to the claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration Number TN 18 AF 0562 was the cause of the accident and that since the said two wheeler was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the owner of the motorcycle remained absent and was set *ex parte*. The second respondent insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the two wheeler and further held that the owner of the two wheeler and the insurer are jointly and severally liable to pay compensation of Rs.3,87,120/- to the claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 09.08.2023.



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5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr. K. Balaji, learned counsel for the appellant and Mrs. R. Rathna Thara, learned counsel for the second respondent/Insurance Company

7. Mr.K. Balaji, learned counsel for the appellant contended that the Award passed by the Tribunal is not commensurate with the injuries sustained by the claimant. He, therefore, prayed for enhancement of compensation.

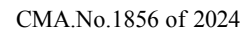
8. Per contra, Mrs. R. Rathna Thara, learned counsel appearing second respondent/Insurance Company contended that the Tribunal, after analysing the evidence on record, had awarded just compensation and therefore the same need not be disturbed in the present appeal.



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9. A perusal of the Discharge Summary (Ex.P5) shows that the claimant had sustained comminuted intra-articular fracture of left distal femur and fracture of tibial spine avulsion left leg. The Medical Board had issued a Disability certificate (Ex.C1) assessing the partial permanent disability of the claimant as 44%. The Tribunal has awarded a sum of Rs.1,76,000/- towards partial permanent disability since there was no functional disability. The age of the claimant was 26 years and the accident took place in the year 2019. Considering the same, awarding Rs.7,000/- per percentage of disability would meet the ends of justice. Hence, a sum of Rs.3,08,000/- is awarded towards partial permanent disability.

9.1. According to the claimant he was working as a technician earning a sum of Rs.18,000/- per month. Since no satisfactory evidence was adduced by him to substantiate his income, the Tribunal fixed the notional monthly income of the claimant as Rs.10,000/-. The accident took place in the year 2019 and in the circumstances, the notional monthly income of Rs.10,000/- fixed by the Tribunal cannot be found fault with. On account of the accident, the claimant would have been out of action



atleast for six months and therefore, a sum of Rs.60,000/- (10,000x6) is awarded towards loss of income.

9.2. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Medical Expenses	1,31,120/-	1,31,120/-
2.	Transportation charges	10,000/-	10,000/-
3.	Extra nourishment	10,000/-	15,000/-
4.	Attender charges	15,000/-	20,000/-
5.	Partial permanent disability	1,76,000/-	3,08,000/- (44x7000)
6.	Loss of income	30,000/- (10,000x3)	60,000/- (10000x6)
7.	Pain and sufferings	15,000/-	25,000/-
8.	Loss of amenities	-	25,000/-
	Total	3,87,120/-	5,94,120/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,87,120/- to Rs.5,94,120/- which would carry interest at the rate of 7.5% per annum.



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10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.3,87,120/- to Rs.5,94,120/- .
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The second Respondent, the United India Insurance Company Limited, is directed to deposit the enhanced compensation amount of Rs.5,94,120/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.3588 / 2019 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order.
- v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.



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Index : Yes/No
Speaking/Non-speaking order
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To

1. Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.
2. The Manager
United India Insurance Company Limited
Sillingi Building, 4th Floor,
No.134, Greams Road, Chennai.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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