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Civil Miscellaneous Appeal No.50 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.50 of 2023

Ramakrishna
S/o.Goopalliappa

... Appellant

Vs.

1.J.Manjunath
S/o.Jaganath

2.Dina Prakash Gandhi
S/o.Tui Sidas Gandhi

3.The Divisional Manager,
The New India Assurance Co. Ltd.,
Divisional Office-XII,
1st Floor, Mayur Complex,
KIADB Main Road,
Pasanya, Bangalore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.213 of 2015 on the file of Motor Accident Claims Tribunal, Additional Special Judge, Krishnagiri, dated 17.07.2017.



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For Appellant : Mr.Mukund R.Pandiyan

For Respondents : Ms.R.Rathna Thara [R3]

JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Additional Special Judge, Krishnagiri, has filed this appeal against the award passed in M.C.O.P.No.213 of 2015, dated 17.07.2017.

2. The claimant was riding a two-wheeler on 20.02.2011 in Hosur-Bagalur main road. The driver of the offending vehicle, which is a TATA Indica Car, was coming in the opposite direction and was proceeding from Bagalur and he dashed on the two-wheeler as a result of which the claimant sustained the following injuries:

- (i) Large irregular contusion 12 x 9 cm involving right leg deformity and tenderness + right leg fracture tibia;
- (ii) Abrasion 4 x 3 cm right elbow;
- (iii) Laceration 2 x 1 cm right femur;
- (iv) Laceration small V shaped 2 x 1 cm right dorsum hand;
- (v) Abrasion 3 x 2 cm center chin;



- (vi) Abrasion 6 x 5 cm center forehead;
- (vii) Abrasion 6 x 5 cm left forehead;
- (viii) Multiple small linear laceration 1 x 0.5 cm left cheek; and
- (ix) Abrasion 4 x 3 cm center back.

3. The claimant underwent treatment as an inpatient from 21.02.2011 to 03.03.2011. Due to traumatic arthritis and malunion, the petitioner's movement was also reduced to 40% and he was unable to sit and stand for long hours. The doctor certified that the permanent disability of the petitioner is 55% and the disability certificate was also issued. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

4. 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 due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to determine the compensation and awarded total compensation of Rs.3,07,000/- under various heads as



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follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Partial loss of income for 6 months (6 * 5000)	30,000/-
2.	Compensation for pain and suffering	50,000/-
3.	Loss of amenities and enjoyment of life	50,000/-
4.	Extra nourishment, transport and attender expenses	10,000/-
5.	Medical expenses	16,000/-
6.	Damages to clothing and articles	1,000/-
7.	Compensation for continuing as permanent disability (50 * 3000)	1,50,000/-
	Total	3,07,000/-

The above compensation was directed to be paid with interest at 7.5% p.a.

5. The claimant, not being satisfied with the compensation awarded by the Tribunal, has approached this Court seeking for enhancement of compensation.

6. Heard Mr.Mukund R.Pandiyar, learned counsel for appellant/claimant and Ms.R.Rathna Thara, learned counsel for third



respondent insurance company.

7. This Court 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 main ground that was urged before this Court was that the claimant was a mason and due to the injuries sustained by him, he has suffered functional disability, which has virtually prevented the claimant from continuing with his avocation. The injuries sustained by the claimant have been extracted supra.

10. Ex.P2 - wound certificate, Ex.P3 - discharge summary and Ex.P4 - emergency record from NIMHANS Hospital, Bangalore, show that the first injury sustained by the claimant has led to deformity on the right leg. The movement of the claimant has also been reduced to 40%. The claimant was not in a position to sit, stand and walk for long hours.



Obviously, it will be very difficult for the claimant to continue his avocation as a mason. Considering the above, this Court is of the considered view that the Tribunal ought to have adopted multiplier method instead of per percentage method.

11. In view of the above, the compensation under the head 'disability' is calculated as follows:

Monthly Income	:	Rs. 7,500/-
Annual Income (7,500 * 12)	:	Rs. 90,000/- -----
Multiplier	:	Rs. 90,000/- x 18 -----
		Rs.16,20,000/-
50% disability (1,62,000*50%):		Rs. 8,10,000/-

Further, the compensation awarded under the heads 'Partial loss of income for 6 months' and 'Compensation for continuing as permanent disability (50 * 3000)' is set aside and instead a sum of Rs.8,10,000/- is awarded under the head 'disability'.

12. The compensation granted under the other heads are reasonable and it does not require the interference of this Court.



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13. In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Disability	-	8,10,000/-
2.	Partial loss of income for 6 months (6 * 5000)	30,000/-	-
3.	Compensation for pain and suffering	50,000/-	50,000/-
4.	Loss of amenities and enjoyment of life	50,000/-	50,000/-
5.	Extra nourishment, transport and attender expenses	10,000/-	10,000/-
6.	Medical expenses	16,000/-	16,000/-
7.	Damages to clothing and articles	1,000/-	1,000/-
8.	Compensation for continuing as permanent disability (50 * 3000)	1,50,000/-	-
	Total	3,07,000/-	9,37,000/-

14. The compensation awarded by the Tribunal at Rs.3,07,000/- is enhanced to Rs.9,37,000/-. The third respondent insurance company is directed to deposit the enhanced compensation, less the amount already



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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.6,30,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 851 days as was ordered by this Court in C.M.P.No.16588 of 2021 in CMA Sr.No.88331 of 2021, dated 02.01.2023. 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.

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

18.06.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Additional Special Judge,
Krishnagiri.



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N.ANAND VENKATESH, J.

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