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CMA.No.1759 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.1759 of 2023

M.Pradeep

Appellant

Vs

1. M.Natarajan

2. TATA AIG General Insurance Company Limited
Coimbatore-641018

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 03.02.2023, made in MCOP.No.1050 of 2020, by the Special Sub Judge-I (MACT) Salem.

For Appellants : Mr.S.Vinod

For Respondents : Mr.K.Vinod-R2
R1-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, challenging the quantum of compensation, awarded by the judgement and decree, dated, 03.02.2023, made in MCOP.No.1050 of 2020, by the Special Sub Judge-I (MACT) Salem.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.15,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 19.08.2020. The 1st Respondent herein/owner of the offending vehicle remained exparte. The



CMA.No.1759 of 2023

WEB COPY

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.P8 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 vehicle belonged to the 1st Respondent and insured with the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.3,88,883/-, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be paid by the 2nd Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Pain and Suffering	50000
2	Loss of Income For Two Months	24000
3	Medical Expenses	188883
4	Transportation Expenses	10000
5	Extra Nourishment	20000
6	Attendants Charges	10000
7	Damage to Clothes	1000
8	Loss of Amenities	10000
9	Continuing Permanent Disability	75000
Total Compensation		388883

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 2nd Respondent Insurance Company, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to



CMA.No.1759 of 2023

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 injured was aged about 29 years old and he was working as a Partner in a Partnership Firm and an income tax assessee and he was earning a sum of Rs.30,000/- p.m. and the accident had occurred in the year 2020 and hence, the monthly notional income arrived at Rs.12,000/- by the Tribunal appears to be on the lower side. In the accident, he sustained segmental fracture left femur and as per the disability certificate, he suffered 15% permanent disability. Due to such disability, he was not able to go for his employment for a period of six months, but the Tribunal has awarded compensation under the head of loss of income for the period of treatment only for two months, which is not just and proper. Fixation of compensation per percentage of disability at Rs.5,000/- is also not proper, since in similar circumstances, the Division Bench of this Court, has arrived at Rs.7000/- per percentage of disability and hence, the same yardstick may be adopted in the case on hand also.

7. It is the further contention of the learned counsel for the Appellant that the injured claimant has also undergone physiotherapy treatment separately, for which he has produced relevant medical bills and marked the same and that at the time of marking the said medical bills, the 2nd Respondent Insurance Company has made objections and on those objections, the medical bills in respect of the physiotherapy treatment were marked, however, in the cross examination, nothing has been culled out against those bills and hence, the



CMA.No.1759 of 2023

WEB COPY

Tribunal ought to have considered those medical bills and awarded compensation amount covered under those bills, but the Tribunal straight away, without any valid reason, rejected the said bills and hence, the said medical bills for physiotherapy treatment require reconsideration.

8. According to the learned counsel for the 2nd Respondent, in so far as the loss of income as well as fixation of compensation per percentage of disability is concerned, appropriate orders may be passed, however, he urged for reduction of the amount covered under the medical bills in respect of physiotherapy treatment.
9. Considering the submissions of the learned counsel on either side, it is seen that the accident had occurred in 2020 and the Appellant was a Partner in a Company. Therefore, fixation of notional monthly income at Rs.12,000/- by the Tribunal is on the lower side. The claimant suffered segmental fracture left femur, long proximal femoral nailing left femur, anterior cervical discectomy and for such injuries, he certainly would have taken treatment for at least four months and also he has taken physiotherapy treatment for a month. Therefore, at least, the claimant would have been idle for at least five months. But, the Tribunal has awarded compensation under the head of loss of income for two months only, taking the monthly income at Rs.12,000/-, which is not reasonable. Under these circumstances, this Court is inclined to re-fix the notional monthly income of the injured at Rs.15,000/-. Thus, the compensation under the head of loss of income for the period of treatment for five months is redetermined at Rs.75,000/- (Rs.15,000/-x5).



CMA.No.1759 of 2023

WEB COPY

10. In so far as fixation of compensation per percentage of disability is concerned, 15% permanent disability arrived at by the Tribunal is not disputed. However, it would be appropriate to fix the compensation per percentage of disability, at Rs.7,000/-, instead of Rs.5,000/- as arrived at by the Tribunal. Thus, the compensation under the head of continuing permanent disability is redetermined at Rs.1,05,000/- (Rs.7,000x15).

11. In so far as the amounts covered under the medical bills in respect of physiotherapy treatment is concerned, those medical bills were marked on the objections made by the 2nd Respondent Insurance Company. However, it is seen that in the cross examination, nothing has been culled out against those medical bills. Hence, this Court is of the view that the Tribunal ought to have awarded amounts covered under those bills, but it failed to do so. Therefore, a sum of Rs.58,000/- as per those medical bills is hereby awarded.

12. The compensation amounts awarded under the other heads are just and reasonable and hence, the same shall stand unaltered. In all, the total compensation is redetermined at Rs.5,27,883/-, which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

13. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.5,27,883/- (Rupees five lakhs twenty seven thousand eight hundred and eighty three only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-



CMA.No.1759 of 2023

WEB COPY

KRISHNAN RAMASAMY, J.

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S.No	Category	Award Amount (Rs.)
1	Pain and Suffering	50000
2	Loss of Income For Five Months (5x15000)	75000
3	Medical Expenses	188883
4	Physiotherapy Expenses	58000
5	Transportation Expenses	10000
6	Extra Nourishment	20000
7	Attendants Charges	10000
8	Damage to Clothes	1000
9	Loss of Amenities	10000
10	Continuing Permanent Disability (Rs.7000x15)	105000
Total Compensation		527883

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, 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 directly to the bank account of the claimant, within a period of three weeks thereafter. No costs.

31.01.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Special Sub Judge-I (MACT) Salem.

2. The Record Keeper, VR Section, High Court, Madras



WEB COPY



CMA.No.1759 of 2023

CMA.No.1759 of 2023