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Civil Miscellaneous Appeal No.1896 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1896 of 2024

Malakondaiah

S/o.Pitchaiah

... Appellant

Vs.

1.S.Lakshmanan

S/o.Solaimani

2.M/s.Reliance General Insurance Co. Ltd.,

Legal Department, Reliance House,

6th Floor, No.6, Haddows Road,

Chennai - 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.04.2024 made in M.C.O.P.No.3974 of 2019 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.Amar D. Pandiya

For Respondents : Mr.P.Suresh Srinivasan [R2]

JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.3974 of 2019, dated 06.04.2024, has filed this appeal.



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2. The case of the claimant is that on 19.05.2019, he was walking near Motilal Street at Pulianthope and at about 19.30 hours, when he came near a stall, the offending vehicle, a two wheeler, dashed on the claimant and as a result, he sustained intertrochanteric fracture left femur. The claimant underwent treatment as inpatient from 20.05.2019 to 21.05.2019 and a surgery was also conducted on 21.05.2019. The Medical Board assessed the permanent disability at 33%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking 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 rider of the two wheeler. However, while rendering this finding, the Tribunal took into consideration the fact that the claimant was attempting to cross the road without watching the approaching vehicle. Therefore, the Tribunal attributed 10% contributory negligence against the claimant. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.2,75,661/-



(rounded off to Rs.2,75,700/-) under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	1,65,000/-
2.	Pain and sufferings	20,000/-
3.	Transport charges	2,000/-
4.	Medical expenses	77,061/-
5.	Extra nourishment	5,000/-
6.	Attender charges	600/-
7.	Damages to clothes	1,000/-
8.	Loss of amenities	5,000/-
	Total	2,75,661/-
	Rounded off to	2,75,700/-
	90% of the compensation	2,48,130/-
	Rounded off to	2,48,100/-

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

4. The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed this appeal seeking enhancement of compensation.

5. Heard Mr.Amar D. Pandiya, learned counsel for appellant/claimant and Mr.P.Suresh Srinivasan, learned counsel for second respondent insurance company.



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6. This Court carefully considered the submissions made by learned counsel on either side and the materials available on record.

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

8. The first issue is with regard to the 10% contributory negligence attributed against the claimant. The Tribunal has rendered a finding as if the second respondent has established that the claimant was trying to cross the road despite seeing the approaching vehicle. This Court carefully went through the evidence of PW-1. In the entire cross-examination, not a single question was asked to PW-1 to the effect that PW-1 was attempting to cross the road despite seeing the approaching vehicle. What is available before the Court is the evidence of PW-1 and also the final report filed by the police against the driver of the offending vehicle, which was marked as Ex.R3. On carefully going through the final report, it is seen that the case projected by the claimant is corroborated by the final report. Therefore, there is no reason as to why contributory negligence must be attributed against the claimant. Consequently, the



finding rendered by the Tribunal attributing 10% contributory negligence is hereby set aside.

9. The next issue is with regard to the quantum of compensation fixed by the Tribunal. The Tribunal has applied per percentage method and granted a sum of Rs.5,000/- per percentage while determining the compensation under the head 'disability'. Considering the fact that the accident had taken place in the year 2019, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'disability' works out to Rs.2,31,000/- [7000 x 33].

10. The injury sustained by the claimant and also the treatment that was undergone by him has been taken note of. Considering the same, this Court is inclined to enhance the compensation under the heads 'transport charges', 'extra nourishment', 'attender charges' and 'loss of amenities' to Rs.5,000/-, Rs.10,000/-, Rs.1,500/- and Rs.10,000/- respectively.

11. The Tribunal has not granted any compensation under the head 'loss of income'. Considering the nature of injury sustained by the



claimant, he would have been out of action for at least one month.

Therefore, this Court grants a sum of Rs.10,000/- under this head.

12. The compensation awarded under the other heads is reasonable and the same does not require the interference of this Court.

13. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<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	1,65,000/-	2,31,000/-
2.	Pain and sufferings	20,000/-	20,000/-
3.	Transport charges	2,000/-	5,000/-
4.	Medical expenses	77,061/-	77,061/-
5.	Extra nourishment	5,000/-	10,000/-
6.	Attender charges	600/-	1,500/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Loss of amenities	5,000/-	10,000/-
9.	Loss of income	-	10,000/-
	Total	2,75,661/-	3,65,561/-
	Rounded off to	2,75,700/-	3,65,600/-
	90% of the compensation	2,48,130/-	-
	Rounded off to	2,48,100/-	-



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14. The compensation awarded by the Tribunal at Rs.2,48,100/- is enhanced to Rs.3,65,600/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, 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 four (4) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. 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 partly allowed. No costs.

02.08.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,

III Court of Small Causes,

Chennai.



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N.ANAND VENKATESH, J.

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