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CMA.No.1591 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1591 of 2023

Saravanan

.... Appellant

vs.

1. Suresh kumar

2. M/s. Iffco-Tokiyo General Insurance Company Limited
No.195, 3rd Floor
Tulsi Chambers,
T.V. Swamy Road, West R.S. Puram,
Coimbatore 641 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.02.2023 in M.C.O.P.1364/2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant	: Mr. G. Harshavarthan for M/s. K. Sharath Chandran
R1	: No appearance
For R2	: Mr. J. Micheal Visuvasam



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J U D G M E N T

The appellant is the claimant in M.C.O.P.1364/2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore, and he filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that occurred on 21.04.2018.

2. The case of the claimant is that on 21.04.2018 he was riding his Bajaj Discover Motorcycle bearing Registration Number TN-41-AH-7404 on Pollachi-Palladam Road and at about 07.15 p.m., a Maruti Suzuki Omni car bearing Registration Number TN 37 DZ 4762, belonging to the first respondent came in the opposite direction and hit the two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to the Government Hospital, Pollachi, and subsequently got himself admitted as an inpatient in One Care Medical Centre, Coimbatore, where he took treatment for 75 days.



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2.1. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration Number TN 37 DZ 4762 was the cause of the accident and that since the said car was insured with the second respondent, the Iffco-Tokiyo General Insurance Company Limited, the owner of the car and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the first respondent, the owner of the car 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 car bearing Registration Number TN 37 DZ 4762 . Since the first respondent, the owner of the car did not have a valid driving license on the date of accident, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.7,58,222/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first



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instance, and then recover the same from the first respondent, the owner of the car, under the same cause of action, vide its orders dated 21.02.2023.

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. G. Harshavarthan, learned counsel for the appellant and Mr.J. Micheal Visuvasam, learned counsel for the respondent/Insurance Company

7. Mr. Mr. G. Harshavrthan, learned counsel for the appellant contended that though the Medical Board attached to Coimbatore Medical College Hospital had assessed the partial permanent disability of the claimant as 43%, the Tribunal has not awarded any amount towards partial permanent disability. He therefore prayed for enhancement of compensation.



8. Per contra, Mr.J. Micheal Visuvasam, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

9. It is seen from the report of the Medical Board (Ex.C1) that the claimant had sustained 43% disability. However, the Medical Board in its report had observed thus:

"X-Rays 21/2/22 - United fracture mid shaft of right radius plates and screw on sides.

United fracture both bone proamel and mid shaft right leg

O/E

Right elbow and wrist rom - full

Deep scar on anterolateral aspect of proximal leg.

Anterior knee pain.

Not able to squat.

On evaluation orthopedic disability is 033% (thirty three)

Plastic surgery disability is 015% (fifteen)



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On evaluation he is found to have locomotor disability, post traumatic sequela, Right upper and lower limb, facial injury. Combined disability is 043% (forty three)"

When the bones are united and the movements are also not restricted, it cannot be stated that there is a functional disability warranting multiplier method. At the same time the Medical Board had stated that the claimant had sustained 15% of disability on account of plastic surgery. This cannot be added in the total disability and therefore 33% of orthopedic disability is taken up for the purpose of calculating loss of partial permanent disability. The age of the claimant was 54 years and the accident took place in the year 2018. Considering the same, awarding Rs.7,000/- per percentage of disability would meet the ends of justice. Hence, a sum of Rs.2,31,000/- (33 x 7000) is awarded towards partial permanent disability.

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



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S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Partial permanent disability	-	2,31,000/- (33x7000)
2.	Pain and sufferings	1,00,000/-	1,00,000/-
3.	Loss of amenities	50,000/-	50,000/-
4.	Loss of income	80,000/-	80,000/-
5.	Medical bills	4,13,222/-	4,13,222/-
6.	Attender charges	40,000/-	40,000/-
7.	Extra nourishment	50,000/-	50,000/-
8.	Transportation charges	20,000/-	20,000/-
9.	Damages to clothes	5,000/-	5,000/-
		7,58,222/-	9,89,222/-

9.2. Thus, the compensation awarded by the Tribunal is enhanced from Rs.7,58,222/- to Rs.9,89,222/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from



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Rs.7,58,222/- to Rs.9,89,222/-

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- 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 Iffco-Tokiy General Insurance Company Limited, is directed to deposit the enhanced compensation amount of Rs.9,89,222/- (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, in the first instance, to the credit of M.C.O.P.1364/2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the first respondent, the owner of the car under the same cause of action.
- v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

11.09.2024

Index : Yes/No



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Speaking/Non-speaking order
bga
To

1. Motor Accident Claims Tribunal,
Special Subordinate Court, Coimbatore.
2. M/s. Iffco-Tokiyo General Insurance Company Limited
No.195, 3rd Floor
Tulsi Chambers,
T.V. Swamy Road, West R.S. Puram,
Coimbatore 641 002.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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