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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1602 of 2024

Sundharamoorthi

..Appellant

.vs.

1.Mohankumar

2.Palanisamy

3.The New India Assurance Co., Ltd.,
No.16, Trichy Main Road, Gugai,
Salem District – 636 006.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order in MCOP No.1094 of 2020 dated 15.09.2022, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.R.Neethiperumal for R3



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.1094 of 2020, dated 15.09.2022 has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 01.08.2020 he was travelling in a two wheeler at Malaipalayam Road and at about 7 a.m, the offending vehicle which was a tractor and which was coming in the opposite direction was driven in a rash and negligent manner and it dashed on the two wheeler. As a result of which, the claimant was thrown out of the vehicle and he sustained closed fracture shaft of right femur. The claimant underwent treatment as an inpatient for five days. The Medical Board assessed the disability of the claimant at 15%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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 driver of the Tractor. Having come to such a conclusion, the Tribunal



fixed the total compensation payable at Rs.2,54,714/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent Disability (15% x 5000)	75,000
2.	Pain and Sufferings	15,000
3.	Loss of Amenities	15,000
4.	Medical Expenses	93,714
5.	Loss of Income (Rs.10,000 x 2)	20,000
6.	Transportation Expenses	10,000
7.	Nutrition Expenses	10,000
8.	Attender Charges	15,000
9.	Damages to clothes	1,000
	Total	2,54,714

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.



6. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing on behalf of the appellant and Mr.R.Needhiperumal, learned counsel appearing on behalf of the 3rd respondent.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.The Medical Board had assessed 15% disability. The Tribunal adopted the per percentage method and fixed a sum of Rs.5,000/- per percentage. As already noted, the accident took place on 01.08.2020. Insofar as the amount to be fixed per percentage, the Division Bench of this Court in CMA No.3334 of 2021 passed the order on 15.06.2022 and came to a conclusion that for the accident which took place in the year 2017, a sum of Rs.7,000/- can be fixed per percentage considering the raise in cost of living. This amount fixed by the Division Bench cannot remain static. The accident in this case has taken place in the year 2020. Therefore, this Court is inclined to fix a sum of Rs.8,000/- per percentage of disability considering the raise in cost of living.

9.In the light of the above discussion, the compensation under the head of disability is fixed as Rs1,20,000/- (15% x 8,000).



10. The claimant came up with a case that he is working as a Manager in a private company and he was earning a sum of R.21,000/- per month. The claimant was not able to produce any evidence to substantiate this claim. Therefore, the Tribunal fixed a sum of Rs.10,000/- as notional monthly income. Considering the year in which the accident had taken place and also the claim made by the appellant, this Court is inclined to fix a sum of Rs.15,000/- as notional monthly income. Considering the nature of injuries sustained, the claimant would not have been able to go to his work for at least three months. Therefore, the compensation under the head of loss of income is fixed at Rs.45,000/- (15,000 x 3)

11. The claimant had underwent treatment as an inpatient for nearly 5 days and he was also operated upon. Therefore, this Court is inclined to enhance the compensation under the head of pain and sufferings to Rs.25,000/-.

12. The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

13. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:



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S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent Disability (15% x 8000)	1,20,000
2.	Pain and Sufferings	25000
3.	Loss of Amenities	15,000
4.	Medical Expenses	93,714
5.	Loss of Income (Rs.15,000 x 3)	45000
6.	Transportation Expenses	10,000
7.	Nutrition Expenses	10,000
8.	Attender Charges	15,000
9.	Damages to clothes	1,000
	Total	3,34,714

14.The compensation awarded by the tribunal at Rs.2,54,714/- is enhanced to Rs.3,34,714/-. The third respondent insurance company is directed to deposit the enhanced compensation, 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 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 claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

10.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.



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N. ANAND VENKATESH., J

SSR

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