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Civil Miscellaneous Appeal No.1585 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1585 of 2024

K.Dinesh
S/o.Kottravel

... Appellant

Vs.

1.Alagusundaram
S/o.Alaguraj

2.Pavithran
S/o.Muthukumar

3.The New India Assurance Co. Ltd.,
Post Box No:47, Kumaran Shopping Complex,
Kumaran Road, Tiruppur - 641 601.

4.The New India Assurance Co. Ltd.,
Amman Complex, Mettur Road,
Erode - 638 011.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2023 made in M.C.O.P.No.8 of 2020 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode.



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Civil Miscellaneous Appeal No.1585 of 2024

For Appellant : Mr.C.Santhosh Kumar
for Mr.B.Vetrivel

For Respondents : Mr.R.Sivakumar [R3 & R4]

JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode, in M.C.O.P.No.8 of 2020, dated 21.06.2023, has filed this appeal.

2. The case of the claimant is that on 03.07.2019, the claimant was travelling along with one Sivaraj in a car and the claimant was driving the car at Tiruppur - Kangeyam Main Road and at about 04.10 p.m., when the car came near vannanthurai pudhur, the offending vehicle was driven by the first respondent in a rash and negligent manner and it came from the opposite direction and it hit the car driven by the claimant as a result of which, the claimant sustained Type III open distal femur comminuted fracture with patella fracture right side, bicondylar hoffa's fracture, closed comminuted left forehead laceration, follow up case of Type III open distal femur comminuted fracture with external fixator insitu with infection and DVT. The claimant underwent treatment as an inpatient for



nearly 29 days in three phases and he also underwent two operations. The Medical Board assessed the disability at 30%. 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 offending vehicle. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.6,12,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical expenses	3,44,000/-
2.	Permanent disability & loss of earning power	1,50,000/-
3.	Pain and sufferings	50,000/-
4.	Loss of earnings	40,000/-
5.	Extra nourishment	10,000/-
6.	Attender charges	10,000/-
7.	Transport to hospital	5,000/-
8.	Damages to clothes and articles	3,000/-
	Total	6,12,000/-



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

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

5. Heard Mr.C.Santhosh Kumar, learned counsel for appellant/claimant and Mr.R.Sivakumar, learned counsel for respondents 3 and 4.

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

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

8. The nature of injuries sustained by the claimant has already been extracted supra and it is also seen that the claimant underwent treatment as an inpatient for a total period of 29 days in three phases and he also underwent two operations. In view of the same, this Court is inclined to



enhance the compensation awarded by the Tribunal under the heads 'transportation', 'extra nourishment' and 'attender charges' to Rs.15,000/-, Rs.25,000/- and Rs.15,000/- respectively.

9. The Tribunal has adopted per percentage method and fixed Rs.5,000/- per percentage. The accident, in this case, had taken place in the year 2019. Considering the judgment of the Division Bench of this Court in ***C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others]***, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'permanent disability and loss of earning power' is fixed at Rs.2,10,000/- (7000 * 30). The Tribunal has quantified the loss of earnings by fixing the notional monthly income at Rs.10,000/-. The claimant, in this case, was aged about 31 years and he was a driver and the accident had taken place in the year 2019. Therefore, this Court is inclined to fix a sum of Rs.15,000/- as the notional monthly income. Accordingly, the compensation under the head 'loss of earnings' would be Rs.60,000/- [15,000 * 4]. The Tribunal had not granted any compensation towards loss of amenities and hence, a sum of Rs.10,000/- is awarded under this head.



10. The compensation granted under the other heads is justified and does not require the interference of this Court.

11. 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.	Medical expenses	3,44,000/-	3,44,000/-
2.	Permanent disability & loss of earning power	1,50,000/-	2,10,000/-
3.	Pain and sufferings	50,000/-	50,000/-
4.	Loss of earnings	40,000/-	60,000/-
5.	Extra nourishment	10,000/-	25,000/-
6.	Attender charges	10,000/-	15,000/-
7.	Transport to hospital	5,000/-	15,000/-
8.	Damages to clothes and articles	3,000/-	3,000/-
9.	Loss of amenities	-	10,000/-
	Total	6,12,000/-	7,32,000/-

12. The compensation awarded by the Tribunal at Rs.6,12,000/- is enhanced to Rs.7,32,000/-. The respondents 3 and 4 are directed to jointly deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of



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claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,20,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 181 days as was ordered by this Court in C.M.P.No.4512 of 2024 in CMA Sr.No.100214 of 2023, dated 13.03.2024. 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 partly allowed. No costs.

09.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,

Special Subordinate Judge Court,

Erode.



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N.ANAND VENKATESH, J.

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