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C.M.A.No.3344 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3344 of 2024

Thiyagarajan

...Appellant

Vs.

1. S.Babu

2. United India Insurance Company Ltd.,
T.P. Cell:No.134, 4th Floor,
Greens Roads, Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to allow the appeal by enhancing the award made in MCOP.No.620 of 2017 dated 12.09.2023 before the Court of Special Sub Judge No.II, (Motor Accident Claims Tribunal), Small Causes Court, Chennai, by awarding additional compensation of Rs.3,00,000/- with interest and cost.

For Appellant : Mr.D.Poovannan

For Respondents : Mr.E.Rajadurai
for M/s. M.S.Gopalan Associates, for R2
: Notice Dispensed with, for R1



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JUDGEMENT

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Challenging the judgment and decree dated 12.09.2023 made in MCOP.No.620 of 2017 before the Court of Special Sub Judge No.II, (Motor Accident Claims Tribunal), Small Causes Court, Chennai, the claimant is before this Court.

2. Mr.E.Rajadurai, for M/s. M.B.Gopalan Associates, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1st remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

4. It is the case of the appellant/claimant that, on 21.11.2016 at about 09.50 hrs, when the appellant was proceeding from Vadapathi to Pazhamathur junction at Maduranthagam to Chengalpattu Road in the motorcycle bearing Regn.No.TN-19-B-5919, at that time, a FZS motorcycle bearing Engine



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No.G3C8E0328671 Chasis No.ME1RG0725G0215822 owned by the 1st respondent insured with the 2nd respondent came in a rash and negligent manner and dashed against the motorcycle driven by the appellant, due to which the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition seeking compensation of Rs.20,00,000/-. Before the tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.13 and on the side of respondents no documents were marked and no witness was examined and Disability certificate was marked as court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence though came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the 1st respondent bike rider, however, awarded a meagre compensation of Rs.4,07,000/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come up with this appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of



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the 1st respondent bike rider, due to which, the appellant sustained grievous head injury and multiple injuries all over the body and the medical board also assessed a permanent disability of 20%, however, the tribunal, instead of adopting multiplier method, had adopted percentage method and had taken only a sum of Rs.5,000/- per percentage instead of Rs.8,000/-, which is not sustainable and the compensation awarded under the other heads are also on the lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances



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of the Appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the accident is of the year 2016, however, the Tribunal had erroneously taken a sum of Rs.5,000/- per percentage of disability. In this regard, this Court perused Ex.C.1, which is the disability certificate issued by the Medical Board and the same reveals that the appellant suffered disability of 20% and this document would clearly prove that the appellant can resume his job after his treatment and that the said injury sustained by him would not have any impact on the job performed by the claimant as also his earning capacity. Further, no oral or documentary evidence was submitted by the appellant to show that he was discontinued from his job and only if the appellant is not able to perform his avocation which he was carrying on before the accident, then the Tribunal can very well adopt the multiplier method for awarding compensation. In the absence of any proof, a compensation of Rs.1,00,000/- awarded by the tribunal under the head Disability by considering the disability sustained by adopting percentage method cannot be said to be erroneous and the same does not warrants any interference of this Court.



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9. Insofar as the compensation awarded under other heads are concerned, the tribunal awarded a compensation of Rs.40,000/-, Rs.7,500/- and Rs.10,000/- under the heads Pain and suffering, Attender charges and Extra nourishment respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.60,000/-, Rs.10,000/- and Rs.25,000/- respectively. Further, it is evident from Ex.P4, Discharge summary that, the appellant got treated as inpatient for a period of 15 days, however, no compensation has been awarded under the head Loss of income, hence, this Court is inclined to award a sum of Rs.10,000/- under the said head. At the same time, a sum of Rs.20,000/- has been awarded under the head Loss of amenities, which is not sustainable and the same is rejected.

10. In view of the above, the compensation awarded by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Part Disability	1,00,000/-	1,00,000/-
Pain and sufferings	40,000/-	60,000/-
Medical expenses	2,28,000/-	2,28,000/-
Loss of income	-	10,000/-
Transportation	11,500/-	11,500/-
Loss of amenities	10,000/-	-
Extra nourishment	10,000/-	25,000/-
Attender charges	7,500/-	10,000/-
Total	4,07,000/-	4,44,500/-

11. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.4,07,000/-** to **Rs.4,44,500/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.620 of 2017 along with interest at the rate of 7.5% per annum from the date of claim

petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the



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Tribunal is directed to transfer the said amount directly to the bank account of the Appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. No Costs.

20.12.2024

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1. The Court of Special Sub Judge No.II, (Motor Accident Claims Tribunal),
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI, J.

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