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CMA.No.2749 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2749 of 2024

U. Nandakumar

.... Appellant

VS.

1. K. Balaji

2. M/s. United India Insurance Company Limited

Sillingi Building, 4th Floor,

No.134, Greams Road, Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.07.2023 in M.C.O.P.5108/2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Mr. K. Balaji

R1 : No appearance

For R2 : Mr. K. Swaminathan



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JUDGMENT

The appellant is the claimant in M.C.O.P.5108/2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T Rules, seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that occurred on 24.02.2018.

2. The case of the claimant is that on 24.02.2018, he was riding his motorcycle bearing Registration Number TN 01 S 8076 on Mambakkam Main Road, Kovilanchery, Chennai and at about 9.00 hours, a speeding lorry bearing Registration Number TN-25-AV-2316, belonging to the first respondent, hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a hospital.

2.1. According to the claimant, the rash and negligent driving



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of the driver of the lorry bearing Registration Number TN-25-AV-2316 was the cause of the accident and that since the said lorry was insured with the second respondent, the United India Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the owner of the lorry 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 lorry bearing Registration Number TN-25-AV-2316 and directed the second respondent Insurance company to pay compensation of Rs.2,21,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal further held that the liability of the owner of the lorry and the insurer is joint and several.



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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.K. Balaji, learned counsel appearing for the appellant and Mr.K. Swaminathan, learned counsel appearing for the second respondent/Insurance Company.

7. Mr.K. Balaji, learned counsel appearing for the appellant contended that the Award passed by the Tribunal is not commensurate with the injuries sustained by the claimant. He, therefore, prayed for enhancement of compensation.

8. Per contra, Mr.K. Swaminathan, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, after analysing the evidence on record, had awarded just compensation and therefore the same need not be disturbed in the present appeal.



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9. A perusal of the records shows that the claimant sustained fracture on his right shoulder. The Medical Board attached to Government Royapettah Hospital, Chennai, assessed the partial permanent disability of the claimant as 30%. Since there is no functional disability, the Tribunal awarded a sum of Rs.1,50,000/- towards partial permanent disability by fixing a sum of Rs.5,000/- per percentage of disability. The claimant was aged 23 years on the date of accident. Considering the age of the claimant and the year of accident, a sum of Rs.7,000/- per percentage of disability is awarded. Hence, a sum of Rs.2,10,000/- is awarded towards partial permanent disability.

9.1. According to the claimant he was working as an Accountant in a private concern earning a sum of Rs.12,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.11,000/- and awarded a sum of Rs.22,000/- (11,000x2) towards loss of income. The accident took place in the year 2018 and in the circumstances, fixing the notional monthly income of the claimant as Rs.12,000/- would meet the ends of



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justice. On account of the accident, the claimant would have been out of action atleast for three months and therefore, a sum of Rs.36,000/- (12,000x3) is awarded towards loss of income.

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

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Partial permanent disability	1,50,000/- (30x5000)	2,10,000/- (30x7000)
2.	Pain and sufferings	25,000/-	50,000/-
3.	Transportation	4,000/-	5,000/-
4.	Extra nourishment	10,000/-	10,000/-
5.	Loss of earnings	22,000/- (11,000x2)	36,000/- (12,000x3)
6.	Loss of amenities	10,000/-	10,000/-
	Total	2,21,000/-	3,21,000/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced to Rs.3,21,000/- that would carry interest at the rate of 7.5%



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10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.3,21,000/-.
- 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 United India Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.3,21,000 /- (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 to the credit of M.C.O.P.5108/2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai,



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within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

- v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

23.10.2024

Index : Yes/No

Speaking/Non-speaking order

bga

To

1. Motor Accident Claims Tribunal,
Special Sub Court No.1, Small Causes Court, Chennai
2. M/s. United India Insurance Company Limited
Sillingi Building, 4th Floor,
No.134, Greaves Road, Chennai 600 006.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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