



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1637 of 2024

Suresh

... Appellant

.VS.

1.C.Sellavel

2.The Branch Manager,
National Insurance Company Ltd.,
No.164, Mettur Main Road,
Bhavani.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.11.2022 made in MCOP No.119 of 2020 on the file of Motor Accident Claims Tribunal/IV Additional District Judge, Erode at Bhavani.

For Appellant : Mr.R.Prabakar

For Respondent : Mr.S.Vadivel for R2



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.119 of 2020, dated 18.11.2022 has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 14.12.2019, he was riding a two wheeler at Selambagoundanpalayam-Olagadam road and at about 8.30 a.m., when he came near the place of occurrence, the offending vehicle which was a TATA Ace was driven in a rash and negligent manner and it dashed on the two wheeler. As a result of which, the claimant was thrown away from the two wheeler and he sustained the following injuries - closed fracture of right tibia, closed comminuted intra articular fracture of distal end of right radius with ulnar styloid fracture, crush injury of right foot with open comminuted fracture of base and shaft of first metatarsal, open fracture of proximal phalanges of 4th and 5th toe, and closed fractures of 2nd and 3rd metatarsals, right heel pad laceration and post traumatic sequelae debridement of right foot with



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gangrenous changes of little toe. The claimant underwent treatment for the period from 14.12.2019 to 25.12.2019 and thereafter, from 30.12.2019 to 31.12.2019. The Doctor who treated the claimant and who was examined as PW2 assessed the disability at 47%. 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 offending vehicle. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.7,45,355/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Pain and sufferings	60,000
2.	Partial loss of earnings	48,000
3.	Disability	2,25,000



S.No	Compensation awarded under the head	Amount (in Rs.)
4.	Medical Bills	3,90,355
5.	Transport to Hospital	15,000
6.	Extra Nourishment	5,000
7.	Damage to clothing and articles	2,000
	Total	7,45,355

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.R.Prabakar, learned counsel appearing on behalf of the appellant and Mr.S.Vadivel, learned counsel appearing on behalf of the 2nd respondent.

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



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8. In the considered view of this Court, the compensation that has been fixed by the Tribunal under various heads are very reasonable. The learned counsel for the appellant submitted that the compensation fixed under the head of loss of earnings is on the lower side. Admittedly, the claimant was an Engineering graduate and he was working in a private concern. There was no evidence to show that the claimant was on loss of pay. Considering the same, the Tribunal has fixed a sum of Rs.12,000/- as notional monthly income and granted a total compensation of Rs.48,000/- for four months. This compensation fixed by the Tribunal is highly reasonable.

9. The learned counsel for the appellant submitted that the Tribunal has not fixed any compensation under the head of future medical expenses. There is absolutely no material to show that the claimant underwent any treatment subsequently. Therefore, compensation cannot be fixed under this head on mere assumptions.

10. Before concluding this case, this Court wants to point out the



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fact that there is some calculation error while calculating the compensation under the head of disability. The Tribunal has fixed a sum of Rs.5,000/- per percentage for 47% disability. The total amount works out to Rs.2,35,000/-. Due to inadvertence, it has been mentioned as Rs.2,25,000/-. By incorporating this correction, the total compensation will work out to Rs.7,55,355/-

11.This Court does not find any merits in this petition and accordingly, this civil miscellaneous appeal stands dismissed. There shall be a direction to the 2nd respondent Insurance Company to deposit the entire 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 judgement. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No Costs.

26.07.2024

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



To

The Motor Accident Claims Tribunal/IV Additional District Judge,
Erode at Bhavani.



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N. ANAND VENKATESH., J

SSI

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