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C.M.A. No. 2551 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2551 of 2021

R.Mohan

... Appellant/Petitioner

Vs.

1. D.Vinayagamurthy
2. United India Insurance Co., Ltd
134, Silingi Building,
No.134, Greams Road,
Chennai 600 006.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P No.1555 of 2015, dated 01.04.2019 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellant : M/s.S.Ravikumar
For R1 : M/s.C.Srinivasan
For R2 : M/s.P.Sankara Narayanan

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the judgment and decree made in M.C.O.P No.1555 of 2015, dated 01.04.2019 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor



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Accidents Claims Petitions) Small Causes Court, Chennai for the enhancement of compensation.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 31.01.2014 at about 11.00 hours, the petitioner was travelling in a two wheeler as a pillion rider along with one Palani on the GST Road. While reaching near Kathipara flyover, the vehicle was driven by the rider in high speed and suddenly he applied brake due to which the petitioner fell down from the vehicle and sustained injuries all over the body. After taking treatment in MIOT Hospital, came forward seeking compensation for a sum of Rs.1,00,00,000/-(Rupees One crore only). The claim petition was resisted by the Insurance Company of the two wheeler and contended that the F.I.R was lodged belatedly after a long period of 10 months and there was no disability sustained by the claimant. The claimant has not sustained injuries as stated by him and the income, avocation and age was also disputed.



4. The first respondent - owner of the vehicle has also filed counter and disputed the manner in which the accident has taken place and also disputed his ownership of the vehicle. However, stated that the vehicle is properly insured. Based on the evidence, the Tribunal held that the rider of the two wheeler was responsible for the accident and the 1st and 2nd respondent who were the owner and injurer of the two wheeler are liable to pay compensation. The Tribunal has also quantified the compensation and awarded Rs.2,10,750/- along with interest at the rate of 7.5% from the date of filing of the petition till the date of realisation.

5. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimants have come forward with this appeal seeking enhancement of compensation.

6. The learned counsel for the Appellant states that the injury sustained by the claimant is bilateral neck of femur fracture and his disability has been assessed by the Chief Civil Surgeon of the Government Peripheral Hospital, K.K.Nagar. The Disability Certificate was also produced and marked as Ex.P5. However, while awarding compensation, the



Tribunal has awarded Rs.3,000/- per percentage for the disability and which is not in accordance with the norms followed by the Court while awarding the Compensation for the disability. Further submitted that the compensation awarded by other heads also on the lower side which is not a just compensation, hence prays to enhance the compensation.

7. The learned Counsel for the Insurance Company submitted that the Tribunal after properly appreciating the evidence, more particularly, the disability has held that the injuries sustained by the claimant is only partial permanent disability and properly awarded the compensation similarly under the other heads. Also the Tribunal has awarded the just compensation and prays to dismiss the appeal. The nature of injury sustained by the claimant is “Fracture of femur” and the same is not a functional disability. There is no evidence placed on record to show that due to injury, claimant has incapacitated from earning his income or to continue his avocation. The tribunal has rightly treated the disability as non-functional disability. Considering the submissions made, by following judgment of this Court ***M. Chinnathambi vs. S. Deepa and another*** reported in ***[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]***, awarding compensation for the injuries



sustained by the claimant for the partial permanent disability Rs.4,000/- per percentage and accordingly, enhanced to Rs.1,60,000/-. The claimant has under gone treatment from 31.01.2014 till 22.02.2014 in MIOT Hospital and surgery was undergone by him. The Tribunal after considering the inpatient treatment has awarded attendance charges to the claimant as Rs.250/- per day and this Court is on the rival side requested modification. Accordingly attendance charges is enhanced to Rs.10,000/-. The Transportation charges is also enhanced to Rs.10,000/-. The compensation under the head pain and suffering is modified to Rs.30,000/-

8. The claimant further stated that the compensation awarded under the loss of income during the treatment period. Even though the Tribunal has awarded 6 months period as disablement period, the monthly income fixed is on the lower side and prays to enhanced the same.

9. Considering the date of accident, this Court is of the view granting Rs.30,000/- per month over under the loss of income during the treatment period is not proper, accordingly the same is modified to Rs.60,000/-. The compensation awarded under loss of future prospectus is modified as loss of



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amenities. The other heads of compensation is reasonable and is confirmed.

The Civil Miscellaneous Appeal is Partly allowed.

10. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability (40%)	1,20,000/-	1,60,000/-	Enhanced
2.	Pain and Sufferings	20,000/-	30,000/-	Enhanced
3.	Transportation	5,000/-	10,000/-	Enhanced
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Attender Charges	5,750/-	10,000/-	Enhanced
6.	Loss of Earnings	30,000/-	60,000/-	Confirmed
7.	Loss of future prospectus modified as Loss of amenities	20,000/-	20,000/-	Confirmed
	Total	2,10,750/-	3,00,000/-	Enhanced

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,750/- is hereby enhanced to **Rs.3,00,000/- [Rupees Three lakhs only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent - Insurance



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Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1555 of 2015 on the file of the Special Sub Judge No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

10.01.2024

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No
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K. RAJASEKAR, J.

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To

1. Special Sub Court No.1, Motor Accidents Claims Petitions)
Small Causes Court, Chennai.

C.M.A. No. 2551 of 2021 and
C.M.P.No.13252 of 2021

10.01.2024