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C.M.A.No.3287 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3287 of 2024

P.Kannusamy

... Appellant

Vs.

1.K.Mohanaraman

2.The Manager,

The United India Insurance Co. Ltd,

Third party service hub,

Plot No.35, 36, 37, AR Plaza,

45 Feet Road, Balaji Nagar extn.,

Saran, Puducherry – 605 011.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.88 of 2019 dated 20.12.2023 on the file of the Motor Accident Claims Tribunal/In Court of Sub-Judge, Neyveli.

For Appellant : M/s.Ramya V. Rao

For Respondents : Notice dispensed with [R1]
Mr.M.Krishnamoorthy [R2]

JUDGMENT

The above appeal is filed by the petitioner/claimant seeking an enhancement of the compensation awarded by the Motor Accidents



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Claims Tribunal (In the Court of Sub-Judge), Neyveli in M.C.O.P.No.88
of 2019 dated 20.12.2023.

2. In view of the judgment, which is going to be passed in this appeal, notice to the 1st respondent is dispensed with.

3. The case of the appellant/claimant is that, on 24.11.2018 at about 17.40 hours, when he was proceeding as a pillion rider of Bajaj Discover motorcycle bearing Regn.No.TN-57-R-9164 from west to east, driven by its rider at a moderate speed, keeping extreme left near Alwai Road, Block 27, Neyveli, the 1st respondent's car bearing Regn.No.PY-01-X-8460, insured with the 2nd respondent, driven by its driver in a rash and negligent manner and without making horn and dashed against the motorcycle, as a result, he was thrown out and sustained fractures and multiple grievous injuries. Therefore, the appellant had filed a claim petition claiming a sum of Rs.30,00,000/- for the injuries sustained by him in the said road accident.



4. Before the Tribunal, the appellant had examined himself as

P.W.1 and marked 22 documents viz., Ex.P.1 to Ex.P.22. No witnesses were examined nor any documents were marked on the side of the respondents. Apart from that, one court document was marked as Ex.C.1. After adjudication, the Tribunal awarded a sum of Rs.3,78,825/- as compensation to the appellant. Not satisfied with the same, the appellant has preferred the present appeal seeking enhancement.

5. Learned counsel appearing for the appellant submitted that, though the Medical Board had assessed the disability of the appellant at 57%, however, the Tribunal had awarded a sum of Rs.2,00,000/- by fixing a sum of Rs.5,000/- per percentage of disability and the disability at 40%, which is wholly unsustainable, which requires to be re-considered by this court, since the accident had happened in the year 2018 and at the relevant point of time, per percentage of disability is Rs.7,000/-. By relying on the decision of the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, she submitted that, since the appellant had suffered permanent disability at 57%, compensation has to be granted under the head "loss of amenities". Accordingly, she prays for appropriate enhancement in favour of the



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appellant.

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6. Per contra, learned counsel appearing for the second respondent/insurance company submitted that, the Tribunal has considered all the materials in proper perspective and awarded compensation under the various heads, which are just and reasonable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent 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 only grievance of the appellant/claimant is with regard to the quantum of compensation awarded. 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 had suffered permanent disability of 57%. Without considering the said certificate, the Tribunal, had erroneously



fixed the percentage of disability at 40% and had erroneously adopted a sum of Rs.5,000/- per percentage of disability and awarded a sum of Rs.2,00,000/- towards disability. When the Medical Board had assessed the percentage of disability suffered by the appellant, the Tribunal ought not to have re-assessed the same and as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.7,000/- per percentage of disability. Hence, this Court is inclined to accept the disability certificate issued by the Medical Board and fix the percentage of disability at 57% and fix a sum of Rs.7,000/- per percentage of disability. Therefore, the compensation awarded under the head disability stands enhanced to a sum of Rs.3,39,000/- (57 x Rs.7,000/- = Rs.3,99,000/-).

9. Further, the Tribunal had awarded a sum of Rs.48,825/- towards medical expenses; Rs.1,00,000/- towards pain and sufferings; Rs.10,000/- towards transportation; Rs.10,000/- towards extra nourishment and Rs.10,000/- towards attender charges. This Court finds that the compensation awarded under the heads medical expenses, pain and sufferings and transportation are just and reasonable and the same is confirmed. However, insofar as the compensation awarded towards extra



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nourishment and attender charges are concerned, this Court feels that the same is on the lower side and accordingly, the compensation awarded under the said heads are enhanced to a sum of Rs.30,000/- and Rs.20,000/- respectively. Further, no compensation has been granted under the head of loss of amenities, hence, as per decision of the Apex Court in *Raj Kumar case (supra)*, this court grants a sum of Rs.50,000/- under the said head.

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

<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Disability (57 x Rs.7,000/-)	2,00,000/-	3,99,000/- (enhanced)
2	Medical expenses	48,825/-	48,825/-
3	Pain and sufferings	1,00,000/-	1,00,000/-
4	Transportation	10,000/-	10,000/-
5	Extra nourishment	10,000/-	30,000/- (enhanced)
6	Attender charges	10,000/-	20,000/- (enhanced)
7	Loss of amenities	-	50,000/-
	Total	3,78,825/-	6,57,825/-

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the impugned award is modified, enhancing the



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compensation amount from **Rs.3,78,825/-** to **Rs.6,57,825/-**. The second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court, to the credit of M.C.O.P.No.88 of 2019 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 six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant 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. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellant will not entitled to any interest for the delay period. No costs.

17.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To
The Motor Accidents Claims Tribunal (In the Court of Sub-Judge),
Neyveli.

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17.12.2024