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C.M.A.No.3387 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM:

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

C.M.A.No.3387 of 2024

M.Janmark

...Appellant

Vs.

1. K.Antony Raja Gopal
2. The United India Insurance Company Ltd.,
Motor Third Party Claims,
Silingai Building, No.134, Greams Roads,
Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to enhance the compensation awarded in impugned order dated 18.04.2024 in MCOP.No.6115 of 2019 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.S.Ravi Kumar

For Respondents : Mr.Sankaranarayanan, for R2
: Notice Dispensed with, for R1



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JUDGEMENT

Challenging the judgment and decree dated 18.04.2024 made in MCOP.No.6115 of 2019 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, the claimant is before this Court.

2. Mr.Sankaranarayanan, 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 04.11.2019 at about 18.30 hrs, when the petitioner was proceeding from west to east at New Avadi Road, Anna Nagar 1st Avenue Salai Junction in the motorcycle bearing Regn.No.TN-02-AT-6673, at that time, a motorcycle bearing Regn.No.TN-20-



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BU-2730 owned by the 1st respondent insured with the 2nd respondent driven by its driver 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.10,00,000/-. Before the tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.7 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 driver of the 1st respondent, however, awarded a meagre compensation of Rs.1,36,500/-. 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.



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5. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, due to which, the appellant sustained grievous head injury and was diagnosed with Compound type 3rd, 4th, 5th metatarsal neck fracture on right and the medical board also assessed a permanent disability of 15%. Though the accident is of the year 2019, however, the tribunal 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.



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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 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 2019, however, the Tribunal had taken 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 15% and by erroneously adopting a sum of Rs.5,000/- per percentage of disability, the tribunal awarded a sum of Rs.75,000/-. However, 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, the amount under the head Disability stands enhanced to a sum of Rs.1,05,000/- ($15\% \times \text{Rs.7,000/-} = \text{Rs.1,05,000/-}$).

9. Insofar as the compensation awarded under other heads are concerned, the tribunal awarded a compensation of Rs.15,000/-, Rs.5,000/-, Rs.5,000/- and Rs.2,500/- under the heads Pain and suffering, Transportation



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expenses, Nutrition Expenses and Attender charges respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.60,000/-, Rs.10,000/-, Rs.20,000/- and Rs.10,000/- respectively. Further, a sum of Rs.20,000/- has been awarded under the head Loss of amenities which is not sustainable and the same has to necessarily be interfered with.

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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	75,000/-	1,05,000/-
Pain and sufferings	15,000/-	60,000/-
Nutritious expenses	5,000/-	20,000/-
Loss of income	13,000/-	13,000/-
Transportation expenses	5,000/-	10,000/-
Loss of amenities	20,000/-	-
Damages to clothes	1,000/-	1,000/-
Attender charges	2,500/-	10,000/-
Total	1,36,500/-	2,19,000/-



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11. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,36,500/-** to **Rs.2,19,000/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.6115 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 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.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

1. The Motor Accident Claims Tribunal,
IV Small Causes Court, Chennai
2. The Section Officer,
V.R. Section, High Court, Madras.

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