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CMA No.656 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.656 of 2024

Mohammed Yunus

...Appellant

.Vs.

1.D.Baskar

2.Reliance Gen. Insurance Co,Ltd.,
No.6 Hadows Road, Reliance House
6th Floor, Nungambakkam, Chennai 600 034.

Now at
Reliance Gen. Insurance Co.Ltd.,
Legal Claims Team – Chennai
Building No.(10&11)
Chennai Citi Center
No.13, 5th Floor
Dr.Radhakrishnan Salai, Mylapore
Chennai 600 004.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal dated 12.4.2023 passed in MCOP.No.5687 of 2016 by the Third Small Causes Court (III Motor Accident Claims Tribunal) at Chennai and enhance the award from the amount of Rs.9,86,800/- to Rs.15,00,000/- (Rupees fifteen lakhs only) as prayed before this Hon'ble Court and direct the 2nd respondent to pay the award amount along with 1st respondent jointly.

For Appellant : Mr.T.G.Ravichandran

For Respondents : Mr.Suresh Srinivasan [R2]



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JUDGMENT

The claimant has filed the above appeal seeking for enhancement of compensation fixed by the Third Small Causes Court (III Motor Accident Claims Tribunal) at Chennai (for short, the Tribunal below) in MCOP.No.5687 of 2016, by award dated 12.4.2023.

2. The case leading to filing of this appeal is as follows :

(i) The appellant was traveling in a two wheeler as a pillion rider on 24.5.2016 at about 20.00 hours. The rider of the motorcycle lost his balance and fell down in the road and as a result, the appellant sustained grievous injuries. As a result, the appellant suffered the following injuries:

"1.Grade III B compound fracture right tibia on ex fix.

2.Grade III B compound fracture right leg with raw area, gap non union right right tibia, infected tibial implant right leg, non union right tibia."

(ii) The appellant also underwent nearly five surgeries and he was in and out of the hospital from the year 2016 to 2018. It was under these circumstances, the claim petition came to be filed before the Tribunal below seeking for compensation.

(iii) The Tribunal, on considering the facts and circumstances of the case and after analyzing the oral and documentary evidence, came to a conclusion that the two wheeler was driven in a rash and negligent manner and as a result, the rider of the two wheeler lost his balance and the appellant fell down from the vehicle. The



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1st respondent, who is the owner of the two wheeler was made vicariously liable for the injuries sustained by the appellant.

(iv) In so far as quantum of compensation is concerned, the Tribunal fixed a total compensation of Rs.9,86,800/- in the following manner:

Sl. No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	Rs.3,05,000
2.	Pain and Sufferings	Rs. 50,000/-
3.	Transportation	Rs. 4,000/-
4.	Medical Expenses	Rs. 5,54,604/-
5.	Extra Nourishment	Rs. 10,000/-
6.	Attender Charges	Rs. 16,200/-
7.	Damage of clothes	Rs. 1,000/-
8.	Loss of Amenities	Rs. 10,000/-
9.	Loss of Earnings	Rs. 36,000/-
	Total Compensation is fixed at	Rs. 9,86,804/-
	Rounded off	Rs. 9,86,800/-

(v) The claimant, not being satisfied with the compensation awarded by the Tribunal, has approached this Court seeking for enhancement of compensation.

3. Heard Mr.T.G.Ravichandran, learned counsel for the appellant and Mr.Suresh Srinivasan, learned counsel for the 2nd respondent Insurance Company.



4. This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

5. On carefully going through the materials available before this Court, it is seen that the appellant had undergone at least five surgeries during the period from 2016 to 2018. The nature of injury that was sustained by the appellant has resulted in the non union in the right tibia. The appellant is said to be an auto driver. The Medical Board assessed the permanent disability suffered by the appellant at 60%. Considering all these facts, it will not be possible for the appellant to effectively continue with his avocation as an auto driver since his right tibia has not properly joined. Hence, this Court is inclined to adopt the multiplier method on the ground that the appellant suffered a functional disability. Accordingly, the compensation that was fixed by the Tribunal by taking the percentage method is interfered in this appeal.

6. In the light of the above discussion, the disability compensation is fixed as follows:

The monthly notional income of the appellant is taken as Rs.10,000/-. If 40% future prospects is added, it comes to Rs.4,000/- and in total, a sum of Rs.14,000/- is fixed as the monthly income of the appellant. Considering the age of the appellant, 15 as the multiplier has to be adopted. Hence, the total compensation



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under the head of disability is Rs.14,000/- x 12 x 15 x 61% = 15,37,200/-. If the compensation granted under the head 'disability' already granted by the Tribunal Rs.3,05,000/- deducted, the balance compensation arrived at by this Court shall be Rs.12,32,200/-.

7. In view of the multiplier method being followed, the loss of income is also subsumed within the above compensation and hence, there is no need to award a separate compensation under the head 'loss of earnings'. In so far as the compensation that has been fixed under the other heads, they look reasonable and do not require the interference of this Court.

8. In the light of the above discussion, the compensation is fixed in the following manner:

Sl. No	Compensation awarded under the head	Amount
1.	Disability	Rs.12,32,200 /-
2.	Pain and Sufferings	Rs. 50,000/-
3.	Transportation	Rs. 4,000/-
4.	Medical Expenses	Rs. 5,54,604/-
5.	Extra Nourishment	Rs. 10,000/-
6.	Attender Charges	Rs. 16,200/-
7.	Damage of clothes	Rs. 1,000/-
8.	Loss of Amenities	Rs. 10,000/-
	Total	Rs.18,78,004/-



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KP

9.The compensation awarded by the tribunal below at Rs.9,86,800/- is enhanced to Rs.18,78,004/- and the enhanced compensation shall be paid by the 2nd respondent with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of copy of this judgment. The other directions issued by the Tribunal below with regard to the mode of payment of compensation remain unaltered.

This Civil Miscellaneous Appeal is allowed in the above terms. No costs.

04.04.2024

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

To
The Third Small Causes Court
(III Motor Accident Claims Tribunal)
at Chennai.

KP

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