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C.M.A.No.23 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.23 of 2024

Bastin

...Appellant

Vs

1.Agilan

2.Magarsharlal

3.The Branch Manager,

United India Insurance Co.Ltd.,

Karaikal.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 16.03.2015 in MACTOP.No.27 of 2013 on the file of the Court of the District Judge cum Motor Accident Claims Tribunal, Karaikal and consequently enhance the amount of compensation awarded to the appellant.

For Appellant : Ms.G.Lavanya, for Mr.Sai Krishnan

For Respondent : Mr.J.Micheal Visuvasam for R3



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JUDGMENT

This civil miscellaneous appeal has been filed challenging the quantum of compensation awarded by the Tribunal vide the award dated 16.03.2015 in MACTOP.No.27 of 2013.

2. The learned counsel for the claimant would submit that on 29.12.2011, when the claimant went in his Cycle at Mariamman Koil Street, Thiruvettakudy, Karaikal, a Motorcycle rode by the 1st respondent bearing Registration No.TN-07-BP-3087, came in a rash and negligent manner and dashed against the claimant, due to which he sustained severe injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Permanent Disability	60,000
2	Mental Agony, Pain and Sufferings	5,000
3	Towards Damage to Clothes	1,000
4	Towards Rich and Nutritious Food	2,000
5	Towards Traveling Expenses	2,000
6	Towards Medical Expenses	5,700



<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
7	Towards Loss of Income	12,000
	Total	87,700

3. Further, she would submit that in the present case, due to the above said accident, the appellant had sustained the deformity in the right shoulder and wasting and weakness are present in front and back of the right shoulder and the stiffness is present in the right shoulder and the movements are restricted and thereby, he feels difficult to do his routine work and loss of sensation mildly present in the right lower limb. For the said injuries, the Doctor had assessed the disability at 30% and the Tribunal had awarded a sum of Rs.2,000/- per percentage as compensation towards disability by applying percentage method, which is too low. Hence, he would request this Court to enhance the same as a sum of Rs.3,000/- per percentage.

4. She would also submit that while awarding loss of income, the Tribunal is supposed to have taken a sum of Rs.350/- per day as notional income and awarded a sum of Rs.40,000/- as loss of income for a period of 4 months, however, the Tribunal had awarded only a sum of Rs.12,000/- towards



loss of income, which is on lower side and hence, she requests this Court to enhance the notional income of the claimant. Further, she would contend that no amount was awarded towards the loss of Amenities and Future Medical Expenses.

5. On the other hand, the learned counsel appearing for the respondent would submit that the compensation awarded by the Tribunal is just and reasonable and hence, requested this Court to confirm the same.

6. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

7. In the present case, there is no dispute with regard to the occurrence of accident and the injuries sustained by the claimant. The claimant had sustained the injuries such as deformity in the right shoulder and wasting and weakness are present in front and back of the right shoulder and the stiffness is present in the right shoulder and the movements are restricted. Hence, considering the nature of injuries sustained by the claimant, the Tribunal had rightly awarded



the compensation towards loss of income for a period of 4 months. However, the notional income fixed by the Tribunal appears to be low and hence, the same stands enhanced to a sum of Rs.40,000/- (Rs.10,000/- per month) as requested by the learned counsel for the claimant.

8. Further, it appears that the Tribunal had awarded a sum of Rs.2,000/- per percentage as compensation towards disability, which is also on lower side and hence, the same stands enhanced to a sum of Rs.3,000/- per percentage. Accordingly, the compensation towards disability is enhanced to a sum of Rs.90,000/-.

9. That apart, since the compensation towards Pain and Sufferings and Extra Nourishment are appears to be too low, the same stands enhanced to a sum of Rs.25,000/- and Rs.10,000/- respectively. Further, since no amount was awarded towards the loss of Amenities and Future Medical Expenses, this Court is inclined to award a sum of Rs.15,000/- towards Loss of Amenities and a sum of Rs.8,300/- towards Future Medical Expenses. The compensation awarded by the Tribunal towards the other heads are just and reasonable and hence, the



same stands confirmed.

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10. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Permanent Disability	60,000	90,000
2	Mental Agony, Pain and Sufferings	5,000	25,000
3	Towards Damage to Clothes	1,000	1,000
4	Towards Rich and Nutritious Food	2,000	10,000
5	Towards Traveling Expenses	2,000	5,000
6	Towards Medical Expenses	5,700	5,700
7	Towards Loss of Income	12,000	40,000
8	Towards Loss of Amenities	Nil	15,000
9	Towards Future Medical Expenses	Nil	8,300
	Total	87,700	2,00,000

11. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.2,00,000/-. Accordingly, the award amount stands increased from a sum of Rs.87,700/- to Rs.2,00,000/-. In all other aspects, the award of the Tribunal



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stands confirmed.

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12. In the result, this Civil Miscellaneous Appeal is partly allowed and the 3rd respondent is directed to deposit a sum of Rs.2,00,000/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MACTOP.No.27 of 2013 on the file of the District Judge cum Motor Accident Claims Tribunal, Karaikal. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

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Index: Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

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