



CMA(MD)No.1444 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA(MD)No.1444 of 2009

Subramanian

... Appellant

vs.

1. Kelandar

2. The Manager,
Bajaj Allianz General Insurance Company Ltd.,
Kay Ancee Tec Insurance Services,
No.8, Arunachalam Street, R.M.Complex,
Near Periyar Statue, Karaikudi.

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.08.2009 made in MCOP.No.37/2007 on the file of the Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Ramanathapuram.

For Appellant	: Mr.S.Ramesh
For R1	: No appearance
For R2	: Mr.S.Srinivasa Raghavan



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JUDGMENT

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Seeking enhancement on the quantum of compensation awarded by the Tribunal, the injured claimant has filed this appeal.

2. In an accident which occurred on 19.03.2006, the appellant/claimant sustained multiple grievous injuries in the left leg and injuries in chin, chest and left hand. For the injuries sustained, he filed a claim petition claiming compensation of Rs.5,00,000/-. The 2nd respondent insurance company with which the offending vehicle was insured, resisted the claim by filing counter affidavit denying their liability. The Tribunal considering the pleadings, oral and documentary evidence adduced on either side, held that the rider of the offending two wheeler owned by the 1st respondent was the cause for the accident, but considering the fact that rider of the two wheeler did not have valid driving licence to drive the same, the Tribunal exonerated the 2nd respondent insurance company and directed the 1st respondent to pay the compensation of Rs.1,29,000/- with 7.5% interest per annum from the date of petition till the date of deposit. Seeking enhancement on the quantum, the claimant is on appeal.



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3. Learned counsel for the appellant submitted that the appellant sustained multiple fracture of tibia and fibula in his left leg. The Doctor has assessed the permanent disability at 42% and the Tribunal has awarded a sum of Rs.84,000/- by awarding Rs.2,000/- for each percentage of disability which is on the lower side and requires enhancement. He further submitted that the award of Rs.30,000/- towards pain and suffering, is too low having regard to the multiple fracture suffered by the claimant. Further, the consolidated award of Rs.3,000/- towards transportation, nutrition and damage to clothes is extremely inadequate and requires enhancement.

4. I have heard the learned counsel for the appellant as well as the 2nd respondent. Despite service of notice and his name being printed in the cause list, there is no appearance by the 1st respondent either by himself or through counsel. Considering the pendency of the appeal from 2009, this Court is inclined to pass orders on merits.



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5. It is the case of the appellant/claimant that he was aged 58 years at the time of accident and he was doing real estate work and incense stick selling work. Due to the injuries, he is unable to do his avocation. The Doctor who examined the appellant has been examined as PW2. He has deposed that the appellant sustained multiple fractures of tibia and fibula bones in his left leg and due to non functioning of popliteal nerve in the left leg, the appellant is unable to stand by using the left foot. PW2 further deposed that due to the abovesaid fracture, the appellant could not walk without stick and while walking, he would experience pain in his left leg. After examination of the appellant with reference to medical records, PW2 has assessed the permanent disability suffered by the appellant at 42% and issued Ex.P11-disability certificate.

6. The Tribunal considering the evidence of PW2 Doctor and Ex.P11, has awarded Rs.84,000/- for 42% disability. Considering the nature of injuries, evidence of PW2 Doctor and relying upon the judgment of this Court in **National Insurance Co. Ltd., v. G.Ramesh** reported in



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2013 (2) TNMAC 583, this Court is inclined to award a sum of Rs. 3,000/- for each percentage of disability. Accordingly, the compensation of Rs.84,000/- awarded by the Tribunal for 42% disability is enhanced to Rs.1,26,000/-. Due to the multiple fracture of left leg, the appellant would have experienced severe pain at his retirement life. Therefore, the compensation of Rs.30,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.50,000/-. The appellant was hospitalised for 11 days at Government General Hospital, Ramanathapuram and later he was referred to Madurai Rajaji Government General Hospital, but he had taken treatment in a private hospital. Due to the fracture of left leg, certainly he would have required assistance of somebody, for which, the Tribunal has not awarded any compensation. Hence, a sum of Rs. 20,000/- is hereby awarded for attendant charges. The award of the Tribunal at Rs.10,000/- towards medical expenses is sustained. As rightly contended by the counsel for the appellant, the consolidated award of Rs. 3,000/- towards transportation, nutrition and damage to clothes is grossly inadequate and therefore, it is enhanced to Rs.20,000/-. Ultimately, the total compensation is modified as appportioned hereunder:-

Disability compensation(42xRs.3000) = Rs.1,26,000/-



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Pain and sufferings	= Rs. 50,000/-
Attendant charges	= Rs. 20,000/-
Medical expenses	= Rs. 10,000/-
Transportation, nutrition & damage to clothes	= Rs. 20,000/-

Total	= Rs.2,26,000/-
(Less) Award of the Tribunal	= Rs.1,29,000/-

Enhancement	= Rs. 97,000/-

7. In the result, there shall be an enhancement of Rs.97,000/- on the quantum. The 1st respondent/owner of the offending two wheeler is directed to deposit the modified compensation of Rs.2,26,000/- with 7.5% interest per annum from the date of petition till the date of deposit along with costs, to the credit of the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same before the Tribunal.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.



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Index :Yes / No

Neutral Citation :Yes / No

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To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Ramanathapuram.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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