



C.M.A.(MD)No.1136 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2024

Delivered on : 05.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1136 of 2018

D.Devendran

: Appellant/Petitioner

Vs.

1.R.Kathirvel

2.The Reliance General Insurance Company Limited,
15A, PLA Kanagu Towers,
11th Cross, Thillai Nagar,
Trichy 620 018.

: Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1998, to set aside the fair and decreetal order passed in M.C.O.P.No.104 of 2016, dated 27.09.2018 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Kulithalai.

For Appellant : Mr.R.M.Sivakumar

For Respondents : Mr.V.Sakthivel, for R2.

: No Appearance, for R1.



C.M.A.(MD)No.1136 of 2018

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JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.104 of 2016, dated 27.09.2018 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Kulithalai.

2. The appellant/claimant, who was awarded with compensation of Rs.2,73,703/- with interest and cost payable by the second respondent with liberty to recover the same from the first respondent, to the claimant for the disability sustained, consequent to an accident occurred on 25.11.2015, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. It is evident from the medical records that the claimant has suffered the following injuries/bone injuries :

RTA-Head injury/multiple injury

- Naso Ethemodial Complex Fracture

- Minimal Sah

- Undisplaced Fracture in both frontal bone

- CSE Rhinorrhea



C.M.A.(MD)No.1136 of 2018

WEB COPY

- Fracture Noted involving the Bilateral frontal bones & involving the frontal sinus

- Fracture noted involving the Nasal Septum & Nasal bones

- Fracture noted involving the medial wall of both orbits

-Fracture noted involving the roof & superolateral wall of right orbit

- Fracture noted involving the anterior wall of right maxillary sinus.

4. It is not in dispute that after the accident, the claimant was taken to Revathy Medical Hospital, Thiruppur and thereafter, admitted in Frontline Hospital, Trichy and he was taking inpatient treatment for the period between 26.11.2015 and 04.12.2015. It is also not in dispute that the fractures were noted involving the bilateral frontal bones and involving the frontal sinuses, nasal septum and nasal bones, medial wall of both orbits, the roof and superolateral wall of right orbit and anterior wall of right maxillary sinus and they have also found hemorrhage in brain portions.

5. The claimant has examined himself as P.W.1 and the Medical Officer Dr.Selvaraj as P.W.2. It is not in dispute that Dr.Selvaraj/P.W.2 has



C.M.A.(MD)No.1136 of 2018

issued disability certificate. As rightly contended by the learned counsel for the second respondent, the Medical Officers, who had treated the claimant at Revathy Hospital and thereafter, at Frontline Hospital were not at all examined.

6. P.W.2/Doctor, considering the medical records available and after examining the claimant, has fixed the disability at 60%. But the learned trial Judge, upon considering the evidence of P.W.2 and other records, has fixed the disability at 30%. As rightly contended by the learned counsel for the claimant, reducing the disability from 60% to 30% without any basis, is not proper. But at the same time, considering the nature of the injuries suffered and the consequent disability sustained and also taking note of the fact that the claimant has not examined the Doctors, who had treated him, this Court is inclined to fix the disability at 40% and as such, the claimant is entitled to get disability compensation at Rs.1,20,000/-. The Tribunal has also awarded Rs.80,000/- for pain and sufferings; Rs. 5,000/- for extra nourishment and Rs.5,000/- towards transportation charges.



C.M.A.(MD)No.1136 of 2018

WEB COPY

7. The Tribunal, by considering his fishing business, has fixed the monthly income at Rs.4,500/- and granted Rs.13,500/- towards loss of income for three months. In the absence of any evidence to prove the avocation or the income, the amount awarded at Rs.13,500/- for loss of income cannot be found fault with.

8. The Tribunal, taking note of the medical bills under Ex.P.3 and Ex.P.4, has rightly granted Rs.2,590/- and Rs.77,613/- towards medical expenses respectively.

9. Considering the nature of injuries, period of treatment and other attending circumstances, the amount awarded at Rs.5,000/- for extra nourishment and Rs.5,000/- for transportation charges, are certainly on lower side and this Court is inclined to award Rs.30,000/- for extra nourishment and Rs.15,000/- towards transportation charges and Rs.15,000/- for attendant charges.

10. Considering the above, this Court decides that the claimant is entitled to get compensation under the following heads:



C.M.A.(MD)No.1136 of 2018

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Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Disability(40% x 3000)	Rs. 90,000/-	Rs.1,20,000/-
Pain and sufferings	Rs.80,000/-	Rs.80,000/-
Extra nourishment	Rs.5,000/-	Rs.30,000/-
Transportation charges	Rs.5,000/-	Rs.15,000/-
Loss of income (3x4,500)	Rs.13,500/-	Rs.13,500/-
Medical expenses (Ex.P.3)	Rs.2,590/-	Rs.2,590/-
Medical expenses (Ex.P.4)	Rs.77,613/-	Rs.77,613/-
Attendant charges	-	Rs.15,000/-
Total	Rs.2,73,703/-	Rs.3,53,703/-

11. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

12. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the tribunal is **enhanced from Rs.2,73,703/- to Rs.3,53,703/-**. The second respondent /Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already



C.M.A.(MD)No.1136 of 2018

deposited, at the first instance and thereafter, recover the same from the first respondent/owner of the vehicle and on such deposit, the claimant is permitted to withdraw the award amount, less amount already withdrawn, if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs.

05.04.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The Motor Accident Claims Tribunal/Subordinate Judge,
Kulithalai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1136 of 2018

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1136 of 2018

Dated : 05.04.2024