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CMA.No.2224 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2224 of 2021

Ramu @ Raman

... Appellant

Vs.

1. Riazudheen Mohammed Imtiaz
 2. United India Insurance Company Limited
Motor Third Party Hub, Silingi building
4th floor, No.134,
Greems road, Chennai-600 006
- ... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to allow the present appeal award enhance compensation in judgment and decree dated 23/01/2020 in MCOP No.7145/2014 on the file of the MACT (Special Sub Court No.II, Court of Small Causes Chennai.

For appellant : Ms.D.Jeevitha
for R.Nalliyappan

For Respondents : M/s.K.Swaminathan for R2

R1- Dismissed as not pressed
vide court order dated 26.04.2024



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JUDGMENT

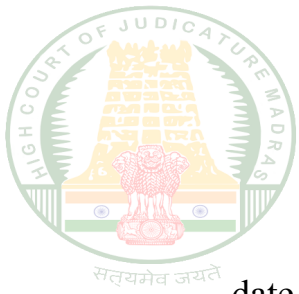
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Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, the injured victim has come before this court by way of this appeal.

2. It is not in dispute that the appellant/claimant suffered injury in a motor accident that had taken place on 26.11.2014. As a result of which, he suffered comminuted fracture on both bones of the left lower leg. The petitioner was operated and internal plate fixation was done with screws. Both the learned counsel have not made any arguments on the negligence and liability aspect. Therefore, the facts necessary for deciding negligence and liability aspect have not been discussed.

3. The Tribunal awarded a compensation of Rs.1,54,574/-.Not satisfied with the same, the claimant has come before this court by way of this appeal.

4.The learned counsel for the appellant/claimant submitted that as per the disability certificate marked as Exhibit P9, issued by Doctor P.W.2, the victim suffered a partial permanent disability of 35%. However, the Tribunal, without any reasons, reduced the same to 10%. The learned counsel further submitted that taking into consideration the



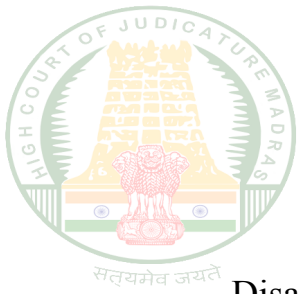
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date of accident, the Tribunal should have fixed Rs.4,000/- per percentage of the disability. The learned counsel also prayed for enhancement of the compensation fixed by the Tribunal under various heads such as pain and suffering, transportation, extra nourishment, attendant expenses etc.,

5. The learned counsel for the second respondent/Insurance company submitted that P.W.2 is not an Orthopedic Surgeon. Therefore, he is not competent to assess the disability of the victim. The learned counsel further submitted that the victim was treated for the fractures suffered by him and in the absence of any concrete evidence to show that he has suffered a disability and the same affects his avocation, the victim is not entitled to any compensation under the head 'permanent disability'. The Tribunal, taking liberal view of the matter, assessed the permanent disability at 10% and the same need not be interfered with.

6. In order to arrive at the percentage of the disability suffered by the victim, this court perused the evidence of PW2, who issued



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Disability Certificate, Exhibit P9 and the Discharge Summary, Exhibit

P2. A perusal of the disability certificate would indicate that the flexibility of the left knee got reduced to 80 degrees and his ankle movements also got reduced to 50 degrees. It is also stated that the claimant had got difficulty in walking faster. Therefore, it is clear that the injuries suffered by the claimant will have some impact on the day to day life of the claimant. The disability certificate was issued by P.W.2 who is a General Surgeon retired from medical service. It is stated that he served as a General Surgeon in Government Stanley Medical College, Chennai. Though there is considerable force in the arguments advanced by the learned counsel for the second respondent that PW-2 is not an expert to assess the disabilities suffered by the victim, in view of the fact that he is only a General Surgeon not an Orthopedic Surgeon, taking into consideration the restriction in the movement of the ankle and the knee as mentioned in the disability certificate, this court fixes disability as 30% instead of 35% as assessed by PW-2. The accident had taken place on 26.11.2014. As per the law laid down by the Division Bench of this court in CMA.No.3334 of 2022, for the year



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2014, a sum of Rs. 4000/- could be granted for per percentage of the disability. Therefore, the claimant is entitled to Rs.1,20,000/- under the head 'partial permanent disability'.

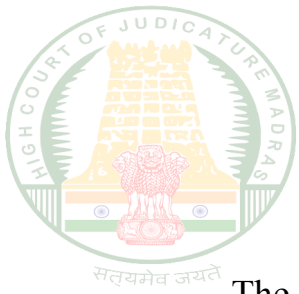
7. A perusal of the discharge summary would indicate that the victim was in the hospital for 13 days. Taking into consideration the period of treatment, the compensation under the head 'pain and suffering' is increased to Rs. 20,000/- instead of Rs.15,000/-. The petitioner is also entitled to transportation expenses at Rs.10,000/- instead of Rs.5,000/- as awarded by the Tribunal. Taking into consideration the length of treatment, the compensation under the heads 'attendant expenses' and 'nutrition expenses' are enhanced to Rs. 10,000/- and Rs. 15,000/- respectively. The compensation awarded by the Tribunal under the head 'damaged clothes' and 'mental agony for the family members of the claimant' are set aside. The compensation awarded by the Tribunal under other heads are confirmed.



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Suffering	15,000/-	20,000/-	Enhanced
2.	Attendant Charges	5,000/-	10,000/-	Enhanced
3.	Extra Nourishments	10,000/-	15,000/-	Enhanced
4.	Transportation Expenses	5,000/-	10,000/-	Enhanced
5.	Permanent Disability	30,000/-	1,20,000/-	Enhanced
6.	Loss of Income	36,000/-	36,000/-	Confirmed
7.	Damage to Clothes	2000/-	Nil	Set aside
8.	Medical Bills	31,574/-	31,574/-	Confirmed
9	Mental agony for the family members of the claimant	5000/-	Nil	Set aside
10	Loss of amenities	15,000/-	15,000/-	Confirmed
	Total	1,54,574/-	2,57,574/-	Enhanced by Rs.1,03,000 /-

8. In view of the discussions made earlier, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,54,574/- is hereby enhanced to Rs. 2,57,574/-.



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The appellant/claimant is entitled to interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of filing of the claim petition till the date of realization. The second respondent/Insurance Company is directed to deposit the enhanced sum along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellant/claimant is entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

9. It is made clear that the second respondent/Insurance Company is entitled to recover the amount from the first respondent as per Clause 2 of the decree and the same is confirmed.

04.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
The Special Sub Court No.II, Court of Small Causes Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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