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CMA.No.2731 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :03.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2731 of 2021

M.Murugan

... Appellant

Vs.

1.P.Pandian

2.Shriram General Insurance Company Limited

1st floor, Plot No.5, Ramachandran Street,

Saravana Nagar, Seevaram, Perungudi,

Chennai-600 096

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to allow the appeal and enhance the compensation in MCOP. No.9/2017 dated 15/02/2021 on the file of the MACT /Special Sub court No.1, (Motor Accident Claim Petitions), Small Causes Court Chennai

For appellant : M/s.Ramya V.Rao

For Respondent : M/s.R.Sree Vidhya for R2

R1- person not found



CMA.No.2731 of 2021

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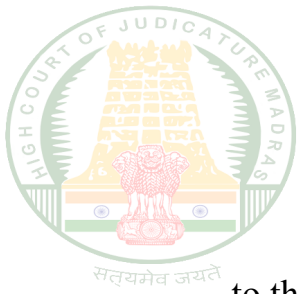
JUDGMENT

Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has come before this Court by way of this appeal.

2. It is not in dispute that appellant is a victim of road accident that had taken place on 02.12.2014 at about 18.50 hours. The petitioner was a rider of an unregistered motorcycle. While he was proceeding near Timmavaram Petrol Bank, a van with registration No.TN-02-R-1590 owned by 1st Respondent, came in the opposite direction and hit the motorcycle of the petitioner. As a result, the petitioner suffered three fractures in shaft of right femur, both the bones in the right leg and fracture in the lateral condyle right femur. It is claimed by the appellant that the accident had taken place due to negligence of driving of the first respondent. Hence, the claim petition was filed.

3. The first respondent remained *ex-parte* and the claim petition was resisted by the second respondent by filing counter.

4. The Tribunal found that the accident had taken place due to rash and negligent driving of a first respondent vehicle and with regard



CMA.No.2731 of 2021

WEB COPY

to that finding there is no challenge by the respondents. The appeal has been filed by the claimant questioning the quantum arrived at by the Tribunal.

5. The learned counsel for the petitioner submitted that the petitioner was a mason by profession and having regard to the fact he suffered fracture in femur bone and both the bones of the right leg, the Tribunal should have adopted multiplier method. The learned counsel further submitted that the amount fixed by the tribunal under various heads such as transportation, extra nourishment, attendant charges, loss of earning etc., are on lower side having regard to the fact that the petitioner was inpatient for 58 days. Alternatively, the learned counsel also submitted that amount of Rs.3,000/- fixed by tribunal based on percentage basis is also on lower side.

6. The learned counsel for the second respondent submitted that the petitioner was operated and internal plate fixation was done and the same was subsequently removed and hence, there is nothing on record to show that the injury suffered by the petitioner affects his avocation. Therefore, the Tribunal is justified in awarding compensation by taking



CMA.No.2731 of 2021

WEB COPY

per percentage basis. The learned counsel further submits that the tribunal had taken into consideration the entire evidence available on record and came to the conclusion that the petitioner was entitled to a sum of Rs.1,47,834/- and the same is based on proper appreciation of evidence available on record. Hence, he prays for dismissal of the appeal by confirming the award.

7. The claimant has not examined the doctor who treated him to show the injury suffered by him really affects his avocation. It is also seen that internal plate fixation was done and the same was subsequently removed. In the absence of material on record to show injury suffered by the petitioner affects his avocation, the Tribunal is justified in fixing compensation on percentage basis.

8. The Tribunal had fixed compensation at the rate of Rs. 3,000/- per percentage of the disability for the accident that had taken place in the year 2014. This court feels that the amount is on lower side and hence, the said amount is enhanced to Rs.4000/- per percentage. Therefore, the petitioner is entitled to Rs.60,000/-(15 x Rs.4000/-) under the head 'partial disability'.



CMA.No.2731 of 2021

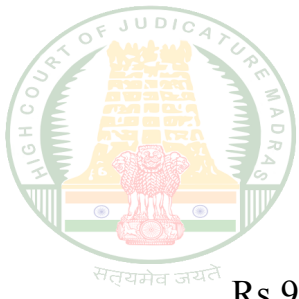
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9. The Tribunal had granted Rs.25,000/- under the head 'pain and suffering'. Having regard to the fact that the petitioner suffered three fractures and had been in the hospital for 58 days, this court enhances the said amount to Rs.50,000/-.

10. The Tribunal has awarded Rs.5000/- under the head transportation. It is also on lower side having regard to the date of accident and hence, the same is enhanced to Rs.15000/-.

11. The award of compensation under the head 'medical expenses' is based on evidence available on record and hence, it requires no interference. Having regard to the length of treatment period, the award of compensation under the head 'extra nourishment' and 'attendant charges' are enhanced to Rs. 25000/- each.

12. The Tribunal fixed notional income only at the rate of Rs.6000/- per month and the same is very much on the lower side. Therefore, this Court is inclined to enhance the same to Rs.12,000/- per month. Since the petitioner suffered three fractures and had been in the hospital for 58 days, this court feels that he could have returned to the work only after 8 months. Therefore, the appellant is entitled to



CMA.No.2731 of 2021

WEB COPY

Rs.96,000/- under the head of loss of income during treatment period
(Rs.12,000/- x 8).

13.The Tribunal has not awarded any amount under the head 'loss of amenities'. The appellant suffered fractures in the right femur bone, fracture in both the bones in the right leg and fracture in the lateral condyle right femur. Therefore, he cannot lead a normal life after the accident. Taking into consideration the said circumstances, the petitioner is awarded a sum of Rs.25,000/- under the new head 'loss of amenities'. Since compensation is awarded on percentage basis, the claimant is not entitled to any amount under the head 'future prospects'. Hence, the award of Rs.20,000/- under the said head is set aside. In total, the amount of compensation is enhanced to Rs.3,01,334/-. After deducting 10% under the head contributory negligence, the petitioner is entitled to Rs.2,71,201/- Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,33,050/- to Rs.2,71,201/-. The break-up is as follows :-



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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	25,000/-	50,000/-	Enhanced
2.	Attender Charges	14,500/-	25,000/-	Enhanced
3.	Extra Nourishments	15,000/-	25,000/-	Enhanced
4.	Transportation Expenses	5,000/-	15,000/-	Enhanced
5.	Permanent Disability	45,000/-	60,000/-	Enhanced
6.	Loss of Income	18,000/-	96,000/-	Enhanced
7.	Medical Expenses	5,334/-	5,334/-	Confirmed
8.	Loss of Future prospects	20,000/-	Nil	Set aside
9.	Loss of Amenities	Nil	25,000/-	Granted
	Total	1,47,834/-	3,01,334/-	Enhanced by Rs.1,53,500 /-
	Less:10%contributory negligence committed by the appellant.	14,783/-	30,133/-	
	Net compensation	1,33,050/-	2,71,201/-	Enhanced by Rs.1,38,151 /-



CMA.No.2731 of 2021

WEB COPY

14. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,33,050/- is hereby enhanced to Rs.2,71,201/- The appellant is entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any) from the date of filing of the claim petition i.e 11.12.2014 to 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 six 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.

03.02.2025

Index:Yes/No
Internet:Yes/No
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CMA.No.2731 of 2021

WEB COPY

To

1. The Motor Accidents Claims Tribunal,
Special Sub Court No.1, (Motor Accident Claim Petitions),
Small Causes Court, Chennai
2. The Section Officer,
VR Section,
High Court, Madras.



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CMA.No.2731 of 2021

S.SOUNTHAR, J.

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