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C.M.A.No.3556 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3556 of 2024

K.Manikandan

... Appellant

Vs.

1.R.Nandagopal

2.The Manager,

M/s.New India Assurance Company Limited,

No.232, Bombay Mutual Buildings,

IV Floor, NSC Bose Road,

Chennai – 600 001.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree/Award passed in M.C.O.P.No.7934 of 2018 dated 22.12.2023 on the file of the Motor Accident Claims Tribunal, II Small Causes Court at Chennai.

For Appellant : Mr.D.Murthy

For Respondents : Notice dispensed with



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JUDGMENT

The claimant is before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, II Small Causes Court at Chennai in M.C.O.P.No.7934 of 2018, dated 22.12.2023.

2. In view of the judgment, which is going to be passed in this appeal, notice to the respondents is dispensed with.

3. On 16.10.2018 at about 02.15 p.m., when the petitioner was riding his two-wheeler bearing Regn.No.TN-73-Z-5182 in Ambattur to Puzhal main road, from east to west direction opposite to Kallikuppam Bharat Perol Bunk, Ambattur, a four-wheeler, namely Eicher van bearing Regn.N.TN-60-AD-4180 came with rash and negligent manner hit behing the Volkswagen Vento Car bearing Regn.No.TN-10-AZ-2884 and due to its impact, it occurred accident and rammed over the two wheeler which resulted grievous injuries to the injured. The first respondent is the owner of the offending vehicle and the second



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respondent is the insurer of the offending vehicle. Therefore, the claimant had filed a claim petition claiming a total compensation of a sum of Rs.1,54,07,000/- under various heads for the injuries sustained by him in the said accident.

4. Before the Tribunal, the petitioner had examined himself as P.W.1 and marked 21 documents viz., Ex.P1 to Ex.P.21. No witnesses were examined nor any documents were marked on the side of the respondents. Apart from that, Disability Certificate was marked as Ex.C.1. After adjudication, the Tribunal awarded a sum of Rs.21,74,000/- with an interest of 7.5% p.a. Not satisfied with the same, the claimant had filed the present appeal for enhancement.

5. Learned counsel appearing for the appellant submitted that when the Tribunal has accepted that the Eicher van was driven in a rash and negligent manner and was the cause for the accident, the compensation awarded by the Tribunal towards disability by fixing a sum of Rs.10,000/- as notional income is wholly inadequate. Further, the amount of compensation awarded under the heads transportation charges,



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extra nourishment and attender charges are also minimal, which requires enhancement. Further, the Tribunal ought to have awarded compensation under the heads physiotherapy and future medical expenses, which requires to be re-considered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellant.

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

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. A perusal of the award reveals that, it is the claimed by the appellant/claimant, at the time of accident, he was working as a working partner and earned a sum of Rs.70,000/- per month and to substantiate his claim, he has produced the bank statement under Ex.P.10, Partnership deed under Ex.P.11, GST Assessment under Ex.P.12 for the avocation and income. However, he failed to examine any official witness with regard to his avocation and



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monthly income. Further, as per Ex.C.1, the appellant had sustained functional locomotor due to right and left bilateral femur fracture, right fracture both bone left, head injury and the disability of the appellant was assessed at 60%. By accepting the said certificate and considering the avocation of the appellant, the Tribunal had treated the appellant as self-employed and by applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixed a sum of Rs.10,000/- as notional income and awarded compensation towards disability by adopting multiplier method, which is contrary to the ratio laid down by the Apex Court in the case of *Raj Kumar Vs. Ajay Kumar & Anr.* reported in **2011 (1) SCC 343**. Further, this Court is of the view that for the injuries sustained by the appellant, the compensation awarded by the Tribunal is on the higher side. However, considering the fact that the present appeal has been preferred by the appellant/claimant and not by the second respondent/Insurance Company, this Court is not inclined to interfere with the compensation awarded by the Tribunal.



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8. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 22.12.2023 made in M.C.O.P.No.7934 of 2018 on the file of the Motor Accident Claims Tribunal, II Small Causes Court at Chennai is confirmed. The 2nd respondent/Insurance Company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.7934 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter. No costs.

07.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.



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M.DHANDAPANI, J.,

sp

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