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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2824 of 2010

A.Moorthy

.. Appellant/Petitioner

..Vs..

1. N.Chinnusamy

2. M/s.Royal Sundram Alliance Insurance Co.Ltd,
4A, 4th Floor, Thirumalai Towers,
723,Avinashi Road, Coimbatore-641 018.

..Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.526 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Sankari dated 19.01.2010.

For Appellant : Mr.C.Kulanthaivel

For Respondent 2 : M/s. R. Srividhya

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation awarded under the Award dated 19.01.2010 passed by the Motor Accident Claims Tribunal Cum Sub Court, Sankari in M.C.O.P.No. 526 of 2008.

The brief facts leading to the filing of the instant appeal are as follows:-

2. The Appellant sustained injuries as a result of an accident that took place on 15.07.2008 at about 9.45 a.m. caused by a lorry bearing registration No.TN-52-2869 owned by the first respondent and insured with the second respondent. The Appellant preferred a compensation claim for a sum of Rs.2,00,000/- before the Motor Accident Claims Tribunal in M.C.O.P.No. 526 of 2008 against the respondents. The Motor Accident Claim Tribunal by its award dated 19.01.2010 in M.C.O.P.No.526 of 2008 directed the second respondent to pay the Appellant a sum of Rs.51,571/- together with interest at the



rate of 7.5% per annum from the date of claim till the date of realization and also awarded Advocate fees at Rs.1,657/-.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard Mr.C.Kulanthaivel, learned counsel for the Appellant and Mrs.R.Srividhya, learned counsel for the second respondent/Insurance Company.

5. According to the learned counsel for the Appellant, the Tribunal under the impugned award has not awarded adequate compensation to the Appellant towards pain and suffering, Nutrition, discomfort, transport charges, loss of amenities, attender charges and partial loss of income during the period for which the Appellant was unable to perform his usual avocation as a result of the accident.

6. Per contra, the learned counsel for the second respondent would submit that the impugned award passed by the Tribunal in favour of the Appellant is a just compensation and in accordance with the settled principles of law.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The Appellant sustained injuries namely, Abrasion in left tempo partietal area, Pain left lip region, Abrasion in left knee, Abrasion in low 1/3rd anterior aspect of left thigh, contrast, Abrasion in upper 1/3rd of left arm, in upper 1/3 forehead c contusion, Pain tenderness left shoulder, Abrasion in multiple in left wrist and right hand and Abrasion over base of right big toes which was not disputed by the second respondent before the Tribunal. As seen from for the injuries, it would certainly have impaired the Appellant from doing his regular work. The Appellant was a Power Loom Weaver and therefore, he has to use both his legs and hands regularly for doing his work as a Power Loom Weaver. The records confirms that the Appellant was under hospitalization for two days and for several months he was treated as an Outpatient.

b) The Appellant has suffered 80% partial and permanent disability. Considering the nature of injuries sustained by the Appellant, this Court is of the considered view that the Appellant ought to have been paid a higher compensation under the heads pain and suffering and transport expenses. Further, the Tribunal has also not awarded any amount towards loss of amenities and discomfort which the Appellant is entitled to.

c) Considering the nature of injuries sustained by the Appellant, he would have required the services of an attender for few months. But, under the impugned award, no attender



charges was granted to the Appellant.

8. In view of the above observations, this Court is of the considered view that the compensation awarded under the impugned award has to be enhanced in favour of the Appellant in the following manner:-

Heads	Amount Awarded by the Tribunal	Modified Amount
Disability	Rs.36,000/-	Rs.36,000/-
Pain and Sufferings	Rs.5,000/-	Rs.40,000/-
Medical Expenses	Rs.7,571/-	Rs.7,571/-
Nutrition	Rs.2,000\-	Rs.5,000/-
Transport Expenses	Rs.1,000/-	Rs.5,000/-
Loss of Amenities and discomfort	Nil	Rs.25,000/-
Attender Charges	Nil	Rs.5,000/-
Partial loss of income	Nil	Rs.13,500/-
Total	Rs.51,571/-	Rs.1,37,071/-

9. In the result, the Civil Miscellaneous Appeal is partly allowed without costs. However, there shall be no order as to costs.

10. Accordingly, the second respondent is directed to deposit the modified Award amount together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after the deducting the amount that has already been deposited, to the credit of MCOP. No. 526 of 2008 on the file of the Motor Accident Claims Tribunal, (Sub Court), Sankari within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the Appellant is permitted to withdraw the amount lying to the credit of MCOP. No. 526 of 2008 on the file of the Motor Accident Claims Tribunal, (Sub Court), Sankari with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



mm/nl

To

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1. The the Motor Accident Claims Tribunal Cum Sub Court,
Sankari
2. The Record Clerk,
VR Section,
High Court, Madras.

+lcc to Mr.C.Kulanthaivel, Advocate sr.no.59721
+lcc to M/s. R. Srividhya, Advocate sr.no.60227

C.M.A.No.2824 of 2010

nr 27/11/2018