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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.426 of 2013

Aburubam @ Aburvam

.. Appellant/Petitioner

Vs

1. Nagarajan

2. The Divisional Manager,
The Oriental Insurance Co.Ltd.,
No.76, Krishnan Street,
Tiruvannamalai.

.. Respondents/Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 21.12.2010 made in MACTOP.No.238 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mr. F.Terry Chellaraja

Respondent -1 : Set exparte

For Respondent-2 : Mr. S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 21.12.2010 passed by the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Tiruvannamalai, in MACTOP.No.238 of 2008.

2. On 11.05.2008, at 11:00 a.m. when the petitioner was traveling as pillion rider on a Motor Cycle bearing Registration No.TN 59 A 9631 from Thiruvannamalai to Vellore road, opposite to a Milk Booth, towards north to south direction alongside the road, the first respondent's vehicle bearing Registration No.TN 59 AA 6831 driven by its driver in a rash and negligent manner dashed against the two wheeler, and thus caused the accident.



In the said accident, claimant sustained grievous injuries. Hence, the claimant filed a Claim Petition against the owner of the offending vehicle as well as the insurer claiming a sum of Rs.3,00,000/- as compensation.

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3. The Insurance Company resisted the Claim Petition by filing a Counter Statement, denying all the averments set out in the Claim Petition.

4. Before the Tribunal, on behalf of the claimant, P.W.1 Shankar, P.W.2/claimant/Aburubam @ Aburvam and P.W.3 Dr.Raveendran were examined and eight documents were marked as Exs.P1 to Ex.P8. On behalf of the second respondent/Insurance Company, neither any witness was examined nor documents were marked.

5. The Tribunal, on evaluation of both oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the first respondent's vehicle bearing Registration No.TN 59 AA 6831 and held that, the second respondent is liable to pay compensation. By coming to such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.70,000/- as compensation with interest at the rate of 7.5% per annum from the date of petition till payment.

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

7. The learned counsel appearing for the appellant/claimant submitted that the claimant was 70 years old at the time of accident and on account of the accident, the claimant sustained fracture of right fibula; comminuted fracture of tibia and laceration apart from multiple injuries all over the body, which is evident from Ex.P.5, Ex.P.6 Ex.P.7 and Ex.P.8, and owing to the same, he finds difficulty in walking, sitting, raising his right hand, lifting any heavy objects and he is unable to do even a normal work, as before. Further, the learned counsel submitted that P.W.3, Dr.Raveendran had assessed the permanent disability sustained by the claimant as 35%, but the Tribunal took the permanent disability only as 20% and awarded a very meager amount of Rs.70,000/- as total compensation to the claimant. It is further submitted that the claimant is as an Agriculturist by avocation and the monthly income derived from the same is Rs.5,000/-per month. Even the claimant opts for better treatment, since he is a septuagenarian, it very difficult to set right the fractures sustained by him at this age. Had the Tribunal considered atleast this aspect, the claimant would have perhaps got just



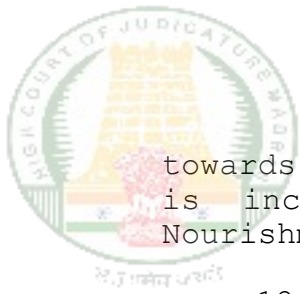
and reasonable compensation and the failure to do so, resulted in awarding meager compensation. The learned counsel further submitted that the Tribunal failed to award any amount towards i) Loss of Amenities and ii) Loss of Income and therefore, he seeks for enhancement of the compensation.

8. Per contra, the learned counsel appearing for the second respondent/Insurance Company would contend that the Tribunal has awarded a just compensation of Rs.70,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

9. Heard the learned counsel for the claimant and the learned counsel for the second respondent.

10. On a perusal of the award, it is seen that since the claimant is an Agriculturist by avocation and there is no proof with regard to the income, the Tribunal did not fix any amount towards loss of income. However, this Court, by taking into account that the claimant is a septuagenarian, and due to the fractures sustained by him in the accident, he is finding it difficult to sit, walk, raise his hand, lift any heavy objects, and also unable to do even the normal work, coupled with the further fact that it is very difficult to set right the fractures sustained by him at this age of 70 years, this Court is inclined to fix the monthly income at Rs.5,000/- . It is relevant to note that the claimant suffered fracture on his right leg and laceration all over the body and though the Dr.Raveendran (PW3) had assessed the partial and permanent disability suffered by the claimant as 35%, the Tribunal, without assigning any reason, reduced it to 20% and awarded Rs.1,000/- per percentage i.e., $(1000 \times 20\% = 20,000)$, which is incorrect. However, this Court deems it appropriate to take the percentage of permanent disability as assessed by the Doctor/PW3 and the amount of Rs.1,000/- fixed towards per percentage of disability is enhanced to Rs.2,000/- per percentage, which works out to Rs.70,000/- (i.e., $(2,000 \times 35\% = 70,000)$).

11. As rightly pointed out by the learned counsel for the appellant, the Tribunal failed to award any compensation under the heads of "Loss of amenities" and "Loss of earning". Thus, this Court is inclined to award Rs.10,000/- under the head of "Loss of Amenities". So far as the compensation under the head "Loss of earning" is concerned, it is seen that the nature of injury suffered by the claimant/appellant, viz., fracture of right fibula and comminuted fracture tibia would obviously affected the earning power of the appellant/claimant at least for a period of three months and this Court deems that it would be appropriate to fix the loss of earning at Rs.15,000/- $(5,000 \times 3)$. Similarly, the Tribunal failed to award any amount



towards Extra Nourishment and Damages to cloths, and this Court is inclined to award a sum of Rs.5,000/- towards Extra Nourishment and Rs.2,000/- towards Damages.

12. Insofar as the compensation awarded by the Tribunal under the heads of i) Transportation, ii) Medical Expenses, ii) Future Medical Expenses and iv) Attender charges are concerned, the Tribunal has awarded only a sum of Rs.30,000/- in toto, which is low and the same is modified and enhanced to Rs.45,000/-, in the manner stated below in the tabulated column. This Court feel that the Tribunal has awarded a just and fair compensation of Rs.20,000/- under the head Pain and Suffering and the same requires no interference.

13. Thus, the compensation awarded by the Tribunal at Rs.70,000/- is hereby modified and enhanced to Rs.Rs.1,67,000/-, in the following manner:-

No	Head	Award
1	Transportation	Rs.10,000/-
2	Extra nourishment	Rs.5,000/-
3	Medical expenses	Rs.10,000/-
4	Future medical expenses	Rs.15,000/-
5	Pain and sufferings	Rs.20,000/-
6	Attender charges	Rs.10,000/-
7	Loss of amenities	Rs.10,000/-
8	Loss of earning capacity due to partial& permanent disability at 35%	Rs.70,000/-
9	Loss of earning for three months	Rs.15,000/-
10	Damages	Rs.2000
Total		Rs.1,67,000/-

14. The second respondent is directed to deposit the entire amount awarded by this Court i.e., Rs.1,67,000/-with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order. The claimant is not entitled to any interest for the enhanced amount for the delay period.



15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

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Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

dpq

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.F.Terry Chellaraja, Advocate SR.No.24110

+1cc to Mr.S.Arun Kumar, Advocate SR.No.24291

C.M.A.No.426 of 2013

VG -I (CO)
GMY(02/12/2019)