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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.298 of 2018

Kandasamy

.. Appellant/Petitioner

Vs.

1.Rajendran

2.Iffco-Tokio General Insurance Co., Ltd.,
No.24, LIC Colony,
Hotel Vasantham Road,
Alagapuram, Salem - 637 004.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.09.2017 made in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
For 2nd Respondent : Ms.C.Harini
for M/s.M.B.Gopalan Associates
for R2

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 15.09.2017 made in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode.

2.The appellant is claimant in M.C.O.P.No.132 of 2014 on the file of Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.10.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the TVS XL Super belonging to the first respondent



and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,51,768/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at admission stage itself.

4.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of P.W.2- Doctor and disability certificate which was marked as Ex.P.8. The appellant suffered 70% disability and due to his age he lost entire earning power. The Tribunal ought to have considered 70% disability and applied multiplier method for arriving compensation. The Tribunal erred in awarding compensation only for 20% disability and the Tribunal has not awarded any compensation towards loss of amenities. The amount awarded by the Tribunal towards pain and suffering is meagre and prayed for enhancement of compensation.

5.Per Contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant produced two disability certificates issued by P.W.2 - Doctor and Medical Board. The Tribunal accepting the disability certificate issued by the Medical Board granted compensation for disability. The appellant has not proved that he has lost earning power and the Tribunal has awarded compensation on percentage method which is proper. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant examined P.W.2-Doctor who deposed with regard to nature of injuries and certified that the appellant suffered 36% disability and marked Ex.P.8. The appellant was referred to Medical Board and the Medical Board issued disability certificate that the appellant suffered 20% disability and the same was marked as Ex.P11. The Tribunal accepted the disability certificate issued by the Medical Board. The appellant has not let in any evidence that he suffered functional disability and lost earning power. In view of the same, the Tribunal awarded compensation on percentage basis. There is no error in the said



finding warranting interference by this Court. The appellant contended that he was earning a sum of Rs.30,000/- per month by grazing the cattles in the field. The accident is of the year 2013. The Tribunal has fixed Rs.6,000/- as monthly income of the appellant and the same is meagre. Hence, a sum of Rs.9,000/- is fixed as monthly income. Due to the injuries and disability, the appellant would not have worked for some months. The amount awarded by the Tribunal towards loss of earning is modified to Rs.54,000/- (Rs.9,000/- x 6) i.e. Rs.9,000/- per month for 6 months. The amounts awarded by the Tribunal towards pain and sufferings and extra nourishment are meagre and the same are enhanced to Rs.20,000/- towards pain and sufferings and Rs.10,000/- towards extra nourishment. The Tribunal has not awarded any amount towards loss of amenities and damages to cloth. A sum of Rs.20,000/- is granted towards loss of amenities and Rs.2,000/- is granted towards damages to cloth. The amounts awarded by the Tribunal under other heads are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	18,000	54,000	Enhanced
2.	Transport to hospital	2,000	2,000	Confirmed
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Permanent disability	60,000	60,000	Confirmed
5.	Medical bills	56,768	56,768	Confirmed
6.	Pain and sufferings	10,000	20,000	Enhanced
7.	Loss of amenities	-	20,000	Granted
8.	Damages to cloth	-	2,000	Granted
	Total	Rs.1,51,768/-	Rs.2,24,768/-	Enhanced by Rs.73,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,51,768/- is hereby enhanced to Rs.2,24,768/- together with interest at the rate of 7.5% per annum from the date of petition



till the date of deposit. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchengode.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+2 cc to M/s.C.Paraneedharan, Advocate Sr.No. 20865

AKM/07.11.19/2P-5C /

C.M.A.No.298 of 2018