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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.775 of 2018

Echappan @ Chinnaraj

..Appellant/Petitioner
Vs.

1.V.Chennammal

2.The Branch Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.195, Tulsi Chambers,
T.V.Samy Road (W) R.S.Puram,
Coimbatore - 641 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2018 made in M.C.O.P.No.72 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

For Appellant : Mr.D.Rameshkumar
For Respondents : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 05.01.2018 made in M.C.O.P.No.72 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.72 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri. 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 25.03.2012. 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 Star Sport two wheeler belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said two wheeler to pay a sum of Rs.4,00,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.



3.The learned counsel appearing for the appellant/claimant contended that the appellant sustained multiple fractures and was taking prolonged continuous treatment for fractures. The appellant was doing agricultural work and was also doing seasonal business of selling mangoes & coconuts and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a sum of Rs.6,000/- per month as notional income of the appellant and granted meagre sum towards extra nourishment, transportation, attendant charges and loss of income. The appellant has spent considerable amount for physiotherapy treatment and produced Ex.P6/physiotherapy bills. The Tribunal has not awarded any amount for physiotherapy treatment. The appellant examined PW2/Doctor, who has treated the appellant to prove the nature of injuries sustained by him and certified the disability of the appellant at 70%. The Tribunal without any reason reduced the percentage of disability from 70% to 55% and granted lesser amount towards disability. In any event, the compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

4.Though notices were served on the respondents and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

6.From the materials available on record, it is seen that the appellant has contended that he was doing agricultural work and was selling mangoes & coconuts and was earning a sum of Rs.15,000/- per month. In the accident, the appellant has suffered grievous injuries, he has taken first aid in the Government Hospital, Krishnagiri. Thereafter, he has taken treatment in Hosmat hospital, Bangalore, as in-patient from 13.05.2012 to 16.05.2012, surgery was conducted and rods were implanted & nails were fixed. The appellant has taken physiotherapy treatment in Goodwill Physiotherapy Clinic, Krishnagiri and spent a sum of Rs.62,500/-and he has produced Ex.P6/physiotherapy bills. The Tribunal has rejected Ex.P6 on the ground that the appellant has not examined the physiotherapist, who had given treatment to him. This Court awards a sum of Rs.30,000/- towards physiotherapy treatment. PW2/Doctor has assessed disability of the appellant at 70%. The Tribunal without assigning any reason has reduced the same to 55%. The appellant is entitled to 70% of disability and this Court awards a sum of



Rs.2,10,000/- (Rs.3,000/- x 70%) by awarding a sum of Rs.3,000/- per percentage. The Tribunal has fixed monthly income of the appellant at Rs.6,000/-. The accident is of the year 2012 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.7,500/- per month is fixed as notional income of the appellant and he is entitled to compensation towards loss of income for six months. The amount awarded by the Tribunal towards loss of income is modified to Rs.45,000/- (Rs.7,500/- x 6). The amounts granted by the Tribunal towards extra nourishment, transportation and attendant charges are meagre and the same are enhanced to Rs.10,000/- each. The appellant has contended that he underwent surgery, rods were implanted and nails were fixed. The appellant would have incurred some expenses in future for removal of rods and nails. The Tribunal has not awarded any amount towards future medical expenses and this Court awards a sum of Rs.10,000/- towards future medical expenses. The amounts granted by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	36,000	45,000	Enhanced
2.	Pain and suffering	60,000	60,000	Confirmed
3.	Extra nourishment	6,000	10,000	Enhanced
4.	Transport to Hospital	5,000	10,000	Enhanced
5.	Permanent disability	1,65,000	2,10,000	Enhanced
6.	Medical expenses	1,22,000	1,22,000	Confirmed
7.	Attendant charges	6,000	10,000	Enhanced
8.	Future medical expenses	-	10,000	Granted
(*) 9.	Physiotherapy treatment	-	30,000	Granted
	Total	Rs.4,00,000/-	Rs.5,07,000/-	Enhanced by Rs.1,07,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.4,00,000/- is hereby enhanced to (*) **Rs.5,07,000/-** 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 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 at the first instance and recover the same from the 1st respondent. 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(CS VIII)

**(*) Corrected as per order
dated 20/12/2019 made herein**

Sd/-

Assistant Registrar (C.S. VIII)

//True Copy//

Sub Assistant Registrar

To

**Corrected order to be substituted for the
order already despatched on 27/11/2019**

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+2cc to Mr.D.Ramesh Kumar, Advocate Sr.No.28624

AKM/23.01.2020/4P-5C /

C.M.A.No.775 of 2018