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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.512 of 2010
and
C.M.P.No.15132 of 2018

P.Ponraj

..Appellant/Petitioner

Vs.

1.B.Angayarkanni
(R1 was set exparte in the Trial Court)

2.HDFC Chubb General Insurance Company Limited,
Raheja Tower, Delta 4,
No.177, Anna salai,
Chennai - 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.01.2009 made in M.C.O.P.No.3966 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 09.01.2009 made in M.C.O.P.No.3966 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3966 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.06.2007.



4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the omni van belonging to the first respondent and directed the 2nd respondent-Insurance Company, being the insurer of the omni van to pay a sum of Rs.3,26,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant sustained severe head injury, injury in chest, multiple compound and comminuted fracture in complete right leg and SOF, compound fracture in right hand and injury in left leg, complete muscle expose in right leg and multiple internal and external injuries all over the body. The appellant suffered permanent disability. He has taken treatment as in-patient at KMC Hospital from 14.06.2007 to 05.09.2007, at M.N.Orthopaedic Hospital from 04.02.2008 to 07.02.2008 and produced two discharge summaries before the Tribunal and marked as Exs.P1 and P2. He had taken treatment in the hospital for more than 8 months. After the award, the appellant was admitted as in-patient for four different spells in two different hospitals from 15.06.2009 to 18.06.2009, 08.12.2009 to 09.12.2009, 10.03.2010 to 16.03.2010 and from 19.11.2010 to 22.11.2010. The learned counsel appearing for the appellant further submitted that the appellant has taken treatment as in-patient for more than 160 days. The appellant underwent surgeries and suffered severe pain. The Tribunal failed to consider the evidence of appellant as P.W.1 with regard to future medical expenses. After the award, the appellant incurred a further sum of Rs.1,27,761.90 for medical treatment. The appellant has filed C.M.P.No.15132 of 2018 for receiving additional documents enclosing four discharge summaries and disability certificate issued by Government Institute of Rehabilitation Medicine at K.K.Nagar, Chennai to show that appellant suffered 65% permanent disability. The appellant examined himself as P.W.1 and deposed about the nature of injuries, treatment taken and disability suffered by him. P.W.2/Doctor deposed that appellant suffered permanent disability and he could not continue his work as loadman. P.W.2/Doctor assessed that appellant suffered 70% permanent disability. The Tribunal erroneously has not awarded any amount towards loss of earning capacity. The appellant suffered functional disability and lost his entire earning capacity. The appellant proved the same by examining P.W.2/Doctor and marked Exs.P1 to P9, P11 & P12 and filed additional documents along with C.M.P.No.15132 of 2018 and prayed for compensation by



adopting multiplier method for loss of earning capacity. The learned counsel appearing for the appellant further contended that the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

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7. Per contra, Mrs. R. Sreevidhya, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove that he is a Loadman and was earning a sum of Rs.300/- per day. He also failed to prove that he lost his earning capacity. The Tribunal considering the evidence of appellant as P.W.1 and P.W.2/Doctor has rightly held that appellant can do some other work by sitting and hence, he is not entitled to compensation by adopting multiplier method. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9. It is the contention of the appellant that he was a Loadman and was earning a sum of Rs.300/- per day. In the accident, he suffered multiple injuries in head, leg, hand, chest and all over the body and has taken treatment as in-patient in three different hospitals on six spells. He underwent four surgeries and suffered permanent disability. The appellant proved the same by examining himself as P.W.1 and also by examining P.W.2/Doctor. P.W.2/Doctor examined the appellant and assessed that appellant suffered disability at 70% and deposed about the nature of injuries and treatment taken. The Tribunal has accepted the evidence of P.W.2/Doctor that appellant cannot do the work as Loadman, but erroneously has not awarded compensation by adopting multiplier method on the ground that appellant can do some sitting work. The said reasoning is not correct. The Tribunal has awarded a sum of Rs.70,000/- for 70% disability by adopting percentage method at the rate of Rs.1,000/- per percentage of disability. Considering the nature of injuries, disability, nature of work done by the appellant and evidence of P.W.2/Doctor, the appellant is entitled to compensation towards permanent disability by adopting multiplier method. The age of the appellant was 40 years at the time of accident and the multiplier applicable is '15'. The appellant contended that he was earning a sum of Rs.300/- per day. But he failed to prove the said contention. The accident occurred in the year 2007 and the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the appellant and the same is proper. Thus, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.7,56,000/- [Rs.6,000/- X 12 X 15 X 70/100].



10. The appellant has contended that after the award, he has taken further treatment in two hospitals for four different spells, underwent four surgeries and incurred a sum of Rs.1,27,761.90 and has produced four discharge summaries and medical bills. Considering the averments in the affidavit, documents C.M.P.No.15132 of 2018 filed by the appellant for receiving additional documents is ordered. The appellant has taken treatment as in-patient in M.N.Orthopaedic Hospital, Kilpauk for 4 days from 15.06.2009 to 18.06.2009, Kumaran Hospitals (P) Limited, Kilpauk from 08.12.2009 to 09.12.2009, 10.03.2010 to 16.03.2010 and from 19.11.2010 to 22.11.2010 and produced medical bills for a sum of Rs.1,27,761.90. Considering the documents filed along with C.M.P.No.15132 of 2018, a sum of Rs.1,27,762/- is awarded towards future medical expenses. The learned counsel appearing for the appellant contended that the appellant has taken treatment as in-patient for more than 160 days. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are enhanced to Rs.25,000/-, Rs.10,000/- and Rs.25,000/- respectively as the same are meagre. The Tribunal has not awarded any amount towards loss of amenities. The appellant is entitled to a sum of Rs.25,000/- towards loss of amenities. The amounts awarded by the Tribunal towards loss of earnings, pain and sufferings, damages to clothes and medical expenses are just and reasonable and hence, the same are 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 earnings	72,000/-	72,000/-	Confirmed
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Transportation	8,000/-	10,000/-	Enhanced
4.	Extra nourishment	15,000/-	25,000/-	Enhanced
5.	Attendant charges	10,000/-	25,000/-	Enhanced
6.	Medical expenses	1,00,000/-	1,00,000/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed



8.	Permanent disability	70,000/-	7,56,000/-	Enhanced
9.	Future medical expenses	-	1,27,762/-	Granted
10.	Loss of amenities	-	25,000/-	Granted
	Total	Rs.3,26,000/-	Rs.11,91,762/-	enhanced by Rs.8,65,762/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,26,000/- is hereby enhanced to Rs.11,91,762/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee on the enhanced amount of 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, to the credit of M.C.O.P.No.3966 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.



2.The Section Officer,
VR Section,
High Court,
Madras.

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+1 Cc to Mr.K.V.Muthuvisakan, Advocate sr 34866.

C.M.A.No.512 of 2010

PP (CO)
SP (26/10/2021)