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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1914 of 2012

M.Armstrong

..Appellant/Petitioner

Vs.

1. S.Prabhakaran

2. Tata A.I.G. General Insurance Company,
Represented by its Branch Manager,
Ahura Centra 4th Floor,
No.82, Mahakali Caves Road,
Andeheri,
Mumbai - 400 093.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2011 made in M.C.O.P.No.365 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

For R2 : Mr.M.B.Raghavan
R1-Not Known

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 12.12.2011 made in M.C.O.P.No.365 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai.

3.The appellant is the claimant in M.C.O.P.No.365 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai. 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 28.05.2006.

4.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 motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.1,45,724/- as compensation to the appellant.

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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 suffered fracture below left leg knee, left leg knee cap slipped down, damages in nerves and grievous injuries. P.W.4/Doctor examined the appellant and certified that appellant suffered 37% disability. The Tribunal without giving any reason has reduced the percentage of disability to 35%. P.W.4/Doctor deposed that for removing the plates and screws, appellant have to spend a sum of Rs.40,000/-. The evidence of qualified Doctor cannot be over looked unless it is defective. The respondents have not disproved the evidence of appellant as P.W.1 and P.W.4/Doctor. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses, transportation, extra nourishment and future medical expenses are meagre. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and loss of income and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.4/Doctor is not the Doctor who treated the appellant. The Tribunal considering the evidence of P.W.4/Doctor, reduced the percentage of disability and fixed percentage of disability of the appellant at 35% which is valid. The amounts awarded by the Tribunal under different heads are not meagre and 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 in the accident, he suffered injuries and fracture in the right leg. He has taken first aid treatment at Government Hospital, Mayavaram and further treatment at Krishna Hospital, Mayavaram. He has taken treatment as in-patient at AKN Nursing Home, Chennai from 29.05.2006 to 04.06.2006. He further taken treatment with one Dr. Shanmugasundaram as in-patient for two days. He underwent surgeries and plates and screws were fixed. To prove the nature of injuries, he examined himself as P.W.1 and examined P.W.4/Doctor. P.W.4/Doctor deposed about the nature of injuries,



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treatment taken and certified that appellant suffered 37% disability. The Tribunal reduced the percentage of disability to 35% and awarded compensation for 35% disability at the rate of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 37% disability at the rate of Rs.2,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.74,000/- (Rs.2,000/- X 37% of disability). The appellant has produced Ex.P6/discharge summary. Though the appellant has stated that he has taken first aid treatment at Government Hospital, Mayavaram and further treatment at Krishna Hospital, Mayavaram and at AKN Nursing Home, Chennai, he has produced only one discharge summary, i.e., Ex.P6. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the appellant is entitled to a sum of Rs.10,000/- towards attendant charges. P.W.4/Doctor deposed that to remove the plates and screws, the appellant would have to spend a sum of Rs.40,000/-. The respondents have not cross examined P.W.4/Doctor and examined any Doctor to disprove the evidence of P.W.4/Doctor. Considering the evidence of P.W.4/Doctor and failure on the part of the 2nd respondent-Insurance Company to disprove the evidence of P.W.4/Doctor, a sum of Rs.10,000/- awarded by the Tribunal towards future medical expenses is enhanced to Rs.40,000/-. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation & extra nourishment and pain and sufferings are meagre and the same are enhanced to Rs.25,000/- each. 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.

10.It is the contention of the appellant that he is an Advocate and is having a Shoe Mart in the name and style of 'Aravind Shoe Mart' and was earning a sum of Rs.10,000/- per month. Except oral evidence, the appellant has not produced any material evidence to prove his avocation and income. The Tribunal has not awarded any amount towards loss of income. Considering the nature of injuries, disability, period of treatment taken and evidence of P.W.4/Doctor, the appellant would not have worked atleast for a period of six months. The accident occurred in the year 2006 and a sum of Rs.7,000/- per month is fixed as notional income of the appellant. Thus, the appellant is entitled to a sum of Rs.42,000/- (Rs.7,000/- X 6 months) towards loss of income for six months at the rate of Rs.7,000/- per month. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Disability	70,000/-	74,000/-	Enhanced
2.	Loss of income	-	42,000/-	Granted
3.	Pain and sufferings	10,000/-	25,000/-	Enhanced
4	Transportation and Extra nourishment	15,000/-	25,000/-	Enhanced
5.	Medical expenses	40,724/-	40,724/-	Confirmed
6.	Future medical expenses	10,000/-	40,000/-	Enhanced
7.	Attendant charges	-	10,000/-	Granted
8.	Loss of amenities	-	25,000/-	Granted
	Total	Rs.1,45,724/-	Rs.2,81,724/-	enhanced by Rs.1,36,000/-
		-	-	-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,45,724/- is hereby enhanced to Rs.2,81,724/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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.365 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai. 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

dt:16.03.2021

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Mayiladuthurai.

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

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.34739

C.M.A.No.1914 of 2012

BR(CO)
RGA(10/08/2021)