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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2463 of 2012

B.Mari

.. Appellant

Vs.

1. K.Srinivasan
(set ex - parte before the Tribunal)
2. ICICI Lambord General Insu.Co.Ltd.,
"Arihant Plaza",
Chennai 600 003- Shifted to
ICICI Lambord Gl.Insu.Co,
Chotabhai Towers,
No.140, Nunagambakam High Road,
Chennai 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2012 made in M.A.C.T.O.P.No.1330 of 2011 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.M.Swamikkannu

For Respondents : Mrs.R.Sreevidhya for R2

: R1- Ex parte

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai, in the Award dated 26.04.2012 made in M.A.C.T.O.P.No.1330 of 2011.



2.The appellant is the claimant in M.A.C.T.O.P.No.1330 of 2011 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.03.2011.

3. The case of the appellant is that on 29.03.2011 at about 14.00 hours. The appellant was standing opposite to Door.No.49, Polizhaloor Main Road. At that time, a Tata Indica Car bearing Regn.No.TN-25-P-8152 came to the extreme wrong side of the road from south to north direction in a rash and negligent manner and dashed against the appellant. The accident had occurred only due to rash and negligent driving of the driver of the car. Due to the said accident, the appellant has got grievous injuries all over his body.

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 car bearing Registration No.TN-25-P-8152, belonging to the first respondent and insured with the second respondent and directed the second respondent to pay a sum of Rs.2,08,100/- as compensation to the appellant on behalf of the first respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.M.Swamikkannu, learned counsel appearing for the appellant / claimant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent.

6.A perusal of the records show that the claimant has sustained dislocation of left knee joint, fracture of left clavicle bone, fracture of 2 to 6 left rib bones with head injuries with contusion of brain. Further, he suffered a bend in his left leg upto 10 degrees without movements and with stiffening. The left foot movements are only 20 degrees with any circular movements. Due to the fracture of rib bones, the appellant is having difficulty in breathing and lifting heavy objects. P.W2 Dr.Amarnath R Sowlee assessed the partial/permanent disability as 65%. P.W.2 has given the disability with regard to the particular limb. This Tribunal has fixed the disability at 45%. The percentage of disability can be reduced to 1/3rd with reference to the whole body. This is the percentage of functional disability with regard to the entire body. Therefore, the functional disability fixed as 15% which is



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reasonable. In Ex.P3 discharge summary the age of the appellant is mentioned as 45 years at the time of accident. The second respondent has not also disputed the age of the appellant and no contra evidence has also let in. The age of the petitioner is fixed as 45 years at the time of accident. As per ruling reported in 2009(6) S.C.C.121, Sarala Verma (SMT) and others-Versus - Delhi Transport Corporation and another, the appropriate multiplier is 14. It is seen that the appellant was a gardener and was earning a sum of Rs.10,000/- to Rs.12,000/- per month at the time of accident. he has not produced any proper evidence to prove the income as required by law. Hence, in the absence of any documentary evidence, as per the precedent, the notional monthly income is fixed as Rs.4,500/- per month since the accident took place on 29.03.2011. Hence, the monthly income of the appellant was fixed by the Tribunal at Rs.4,500/- per month. The Tribunal has presumed that the appellant has lost his earning power to some extent in his future. The functional disability is fixed as 15%. The age of the appellant was fixed as 45 years. The monthly earning is fixed at Rs.4,500/- As per the second schedule of M.V.Act the multiplier is 14 as per Sarala Varma's Case. Hence, the Tribunal fixed his future loss of income or earning power at $\text{Rs.4,500} \times 12 \times 14 \times 15\% = 1,13,400/-$. This Court is of the opinion that the award passed by the Tribunal towards "Future loss of earning" is very meager. Hence, this Court is inclined to award as follows: $\text{Rs.4,500} \times 12 \times 14 \times 25\% = 1,89,000/-$ for the same. The Tribunal has awarded a sum of Rs.30,000/- (Rs.2,000/- per percentage of disability) towards "disability". Considering the nature of injuries and the year of the accident, this Court finds that it is sufficient and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.3,000/- towards "Transportation" the same is hereby meagre and this Court is inclined to award a sum of Rs.5,000/- for the same. The Tribunal has awarded a sum of Rs.2,000/- towards "Extra Nourishment" which is not sufficient and the same is hereby enhanced to Rs.5,000/-. The Tribunal has awarded a sum of Rs.1,200/- towards "Damages to clothes and articles" which is just and reasonable, hence, the same is confirmed. The Tribunal has awarded a sum of Rs.13,500/- towards "loss of income during the treatment" which is also not sufficient and the same is hereby enhanced to Rs.18,000/-. After considering the medical bills and receipts the Tribunal has awarded a sum of Rs.20,000/- towards "Medical Expenses" hence, the same is hereby confirmed. The Tribunal has awarded a sum of Rs.25,000/- towards "pain and sufferings" considering the nature of the injuries sustained by the appellant, the amount awarded by the Tribunal is very reasonable. hence, the same is confirmed. The Tribunal has not award any amount towards "Attendant Charges" this Court is inclined to award a sum of Rs.5,000/- towards the same. Thus the total compensation of Rs.77,000/- awarded by the Tribunal is



enhanced as under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning power/capacity	1,13,400/-	1,89,000/-	enhanced
2.	Permanent Disability	30,000/-	30,000/-	confirmed
3.	Loss of income during treatment	13,500/-	18,000/-	enhanced
4.	Transportation	3,000/-	5,000/-	enhanced
5.	Extra Nourishment	2,000/-	5,000/-	enhanced
6.	Damages to clothes and articles	1,200/-	1,200/-	confirmed
7.	Medical Expenses	20,000/-	20,000/-	confirmed
8.	Pain and Sufferings	25,000/-	25,000/-	confirmed
9.	Attendant Charges	-----	5,000/-	granted
	Total	Rs.2,08,100/-	Rs.2,98,200/-	enhanced by Rs.90,100/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.2,08,100/- awarded by the Tribunal is hereby enhanced to Rs.2,98,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent 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 Award amount along with interest and costs. No costs.

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Sd/-
Assistant Registrar(CS)

// True Copy//

Sub Assistant Registrar

sbn

To

1. The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+lcc to M/S.M.Swamikkannu, Advocate, S.R.No.16157
+lcc to M/S.R.Sreevidhya, Advocate, S.R.No.16905

C.M.A.No.2463 of 2012

BP(CO)
SU(11/08/2021)