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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.319 of 2012

V.Sathish

...Appellant/Claimant

versus

1. A.P. Arunachalam

2. The Branch Manager,

Reliance General Insurance Company Ltd.,

Branch Office at 1st Floor,

K.J. No.141/71, T.V.Samy Road West,

R.V.Puram,

Coimbatore - 641 002.

...Respondents/Respondents

(R1-Givening)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2010 in MCOP No.573 of 2008 passed by the Motor Accident Claims Tribunal, (Additional District Judge and FTC No.1), Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.E.Rajadurai for
M/s.M.B.Gopalan for R2
R1 - Given up

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 10.11.2010 passed by the Motor Accidents Claims Tribunal (Additional District Judge and Fast Track Court No.I) Erode in MCOP No.573 of 2008.

2. The appellant / claimant sustained injuries on 09.05.2008 as a result of an accident caused by a vehicle owned



by the first respondent and insured with the second respondent / Insurance Company. He preferred a claim before the Motor Accidents Claims Tribunal (Additional District Judge and Fast Track Court No.I), Erode seeking compensation for the injuries sustained by him as a result of an accident.

3. The Motor Accidents Claims Tribunal (Additional District Judge and Fast Track Court No.I), Erode under the impugned award directed the respondents to pay the appellant / claimant a compensation of Rs.1,95,350/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Permanent disability and loss of future income	1,72,800/-
Medical expenses	12,550/-
Pain and suffering	10,000/-
Total	1,95,350/-

4. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

5. Heard Mr.R.Nalliyappan, learned counsel for the appellant / claimant and Mr.E.Rajadurai, learned counsel for the second respondent / Insurance Company.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellant /claimant has filed 22 documents, which were marked as Exs.P1 to P22. Three witnesses were also marked on his side viz., the appellant /claimant himself as PW1, the Doctor, who examined him as PW2 and one Pannerselvam, as PW3. On the side of the respondents neither any document was filed nor any witness examined before the Tribunal.



8. In the claim petition, the appellant / claimant has pleaded that he was a Tailor aged 19 years and his employer was Easwaran Tex, Perundurai and he was earning Rs.9000/- p.m., at the time of the accident. . However, the Tribunal fixed the notional monthly income of the appellant / claimant at Rs.3,000/-. This Court is of the considered view that the said assessment is low and it has to be enhanced. If due consideration was given to the year of the accident, the assessment of the notional monthly income of the appellant / claimant by the Tribunal would have been much higher. After giving due consideration to the year of the accident which happened on 09.05.2008, this Court fixes the notional monthly income of the appellant / claimant as Rs.5,000/- instead of Rs.3,000/- fixed by the Tribunal.

9. The Tribunal has also failed to award any compensation towards loss of future prospects, despite the fact that the appellant / claimant has lost vision in one of his eyes due to the grievous injuries sustained by him as a result of the accident. The Tribunal has also failed to consider the fact that it would be difficult for the appellant / claimant to get married due to the injuries sustained by him as a result of the accident. The Hon'ble Supreme Court in the recent decision in the case of Erudhaya Priya versus State Express Transport Corporation Limited reported in 2020 SCC Online SC 601 has permitted grant of loss of future prospects, whenever the injuries are grievous in nature which has incapacitated the injured / accident victim by following the earlier decision of the Hon'ble Supreme Court in the case of Sandeep Khanuja versus Atul Dande and another reported in 2017 3 SCC 351. The case on hand is one such case, which entitles the appellant to claim compensation towards loss of future prospects. Accordingly, this Court awards 40% towards loss of future prospects to the appellant / claimant after giving due consideration to his age, following the decision of the Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680.

10. The Tribunal has erroneously adopted 16 multiplier instead of 18, since the appellant / claimant was aged 19 years at the time of the accident. Hence, the correct multiplier as per the decision of the Hon'ble Supreme Court in the case of



Sarala Verma & Ors vs. Delhi Transport Corp. & Anr. reported in 2009 6 SCC 121 is 18. Accordingly, the same is modified by this Court.

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11. The Doctor, who examined the appellant / claimant has issued the disability certificate (Ex.P17) at 30% and after giving due consideration to the nature of injuries sustained by the appellant / claimant, as indicated earlier in this judgment, this Court is of the considered view that the assessment made by the Doctor as per Ex.P17 is a correct assessment.

12. For the foregoing reasons, the loss of earning capacity of the appellant / claimant is enhanced from Rs.1,72,800/- fixed by the Tribunal to Rs.4,53,600/- as indicated below :

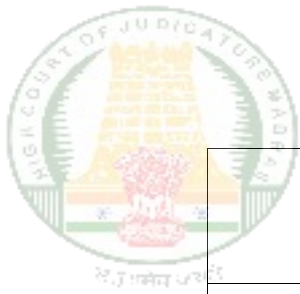
$$\begin{aligned} \text{Rs.5,000/-} + 40\% &= \text{Rs.7,000/-} \times 12 \times 18 * 30\% \\ &= 4,53,600/- \end{aligned}$$

13. Insofar as the compensation awarded by the Tribunal under the head, medical bills is concerned, the same is correct, which is in accordance with the medical bills produced by the appellant / claimant, which were marked as Ex.P12 before the Tribunal.

14. However, the Tribunal ought to have granted a higher compensation towards pain and suffering to the appellant / claimant in view of the grievous injuries sustained by him and the loss of vision in one of his eyes due to the accident. Accordingly, this Court enhances the compensation from Rs.10,000/- to Rs.25,000/- towards pain and suffering.

15. The Tribunal has also erroneously failed to award any compensation towards transportation, Extra nourishment, attender charges and loss of amenities which the appellant / claimant is legally entitled to in view of the nature of the injuries sustained by him and the long period of his hospitalisation. This Court in accordance with the settled practice awards a compensation of Rs.10,000/- each towards transportation, extra nourishment, attender charges and awards Rs.25,000/- towards loss of amenities.

16. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of earning capacity * Rs.3,000/- x 12 x 16 x 30% #Rs.7,000/- x 12 x 18 x 30%	1,72,800/- *	4,53,600/- #
Medical expenses	12,550/-	12,550
Pain and suffering	10,000/-	25000
Transportation	-	10000
Nourishment	-	10000
Attender charges	-	10000
Loss of amenities	-	25000
Total	1,95,350/-	5,46,150/-

17. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,95,350/- to Rs.5,46,150/- as indicated above. No costs.

18. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.573 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge and FTC No.1), Erode, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

vsi2



To

1. Motor Accidents Claims Tribunal,
The Additional District Judge
Fast Track Court No.1),
Erode.

Copy to

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

C.M.A.No.319 of 2012

LN(CO)

B.VC (20/09/2021)