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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3639 of 2013

Nirmal Arun

.. Appellant

Vs.

1. Arumugham

2. Reliance General Insurance Company Ltd.
No.6, Haddows road,
Nungambakkam, Chennai-14.

.. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2013 made in M.C.O.P.No.82 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant : Mr.D.Ravichander

For R2 : Mr.Suresh Srinivasan
for Mr.K.Moorthy

R1 : Exparte

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.09.2013 made in M.C.O.P.No.82 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

2. The appellant is claimant in M.C.O.P.No.82 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.10.2009.



3. 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 mini lorry belonging to the 1st respondent and directed the 2nd respondent/ Insurance Company being insurer of the said mini lorry to pay a sum of Rs.5,82,550/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant contended that the disability caused to the appellant is permanent in nature and it is impossible for the appellant to move his right hand. Due to the injuries, the appellant could not write and do the work. The injuries caused disfigurement in his face and hand. Due to disfigurement, the social stigma is caused on the appellant. The Tribunal failed to give any finding with regard to permanent disability and arrive at a compensation without giving any reason. Due to the injuries, the appellant could not pursue his higher studies and lost future prospects. The Tribunal having held that the accident occurred due to negligence on the part of the driver of the vehicle belonging to the 1st respondent, ought to have invoked Section 163A of the Motor Vehicles Act and awarded higher compensation. The appellant produced Exs.A3 to A18, Discharge summaries and Medical bills to prove the expenses incurred for the medical treatment. The respondents have not disputed the genuineness of the bills produced by the appellant. The Tribunal erred in not accepting the amount claimed by the appellant towards medical expenses and awarded only a meagre amount as compensation towards medical expenses. The Tribunal failed to award compensation towards future medical expenses and loss of amenities. Due to the negligence on the part of the driver of the vehicle belonging to the 1st respondent, the appellant's bright future was put in dark. The Tribunal ought to have awarded reasonable amount as compensation and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he lost his earning power, even after completing B.E. course. In such circumstances, the Tribunal rightly awarded compensation towards disability by adopting percentage method and also awarded a sum of Rs.50,000/- separately for loss of earning power. The Tribunal considering the nature of injuries, evidence of P.W.2/Doctor and the documents filed by the appellant, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for



enhancement of compensation and prayed for dismissal of the appeal.

7. 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.

8. It is the contention of the appellant that he sustained injuries in the accident that occurred on 23.10.2009. The appellant suffered fractures in head, right upper thigh and 2nd and 3rd fingers in the right hand apart from other injuries. The appellant examined himself as P.W.1 and the Doctor as P.W.2 to prove the injuries and disability. P.W.2/Doctor deposed in detail about the nature of injuries, treatment taken and certified that the appellant suffered 51% disability. The 2nd respondent did not let in any contra evidence to disprove the evidence of PW1 and disability certificate assessed by P.W.2/Doctor. The Tribunal accepting Ex.P2/disability certificate fixed the disability at 51% and awarded a sum of Rs.76,500/- as compensation towards disability @ Rs.1,500/- per percentage of disability. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards disability by adopting multiplier method. The accident is of the year 2009 and hence, the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,53,000/- (Rs.3,000/- X 51%).

8(i). According to the appellant, he has spent a sum of Rs.7,87,770/- towards medical expenses. The appellant has also produced Exs.P6 to P18/Medical bills issued for having spent the said amount. The 2nd respondent has not disputed the genuineness of the said bills. The Tribunal reduced the same to Rs.4,01,050/- on erroneous ground that the appellant has taken treatment in higher quality hospital. When the appellant has produced the bills for having spent a sum of Rs.7,87,770/- towards medical expenses and the same is not disputed by the 2nd respondent, the appellant is entitled to the said sum of Rs.7,87,770/- towards medical expenses.

8(ii). The appellant has taken treatment as in-patient in MIOT Hospital from 24.10.2009 to 11.11.2009, 11.12.2009 to 21.12.2009 and 19.01.2010 to 26.01.2010 in three different spells and marked three discharge summaries as Exs.P3 to P5 to prove the same. The Tribunal has awarded a lump sum compensation of Rs.30,000/- towards extra nourishment, attendant charges, damage to clothes, ambulance and rental taxi expenses, which are meagre. Considering the nature of injuries and period of treatment taken by the appellant, this Court separately awards Rs.15,000/-, Rs.25,000/-, Rs.1,000/- and Rs.15,000/- towards



extra nourishment, attendant charges, damage to clothes and transportation respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, he is entitled to a sum of Rs.30,000/- towards loss of amenities. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Pain and suffering	25,000	25,000	Confirmed
2.	Extra nourishment, attendant charges, damage to clothes and transportation	30,000	15,000 25,000 1,000 15,000	Enhanced
3.	Disability	76,500	1,53,000	Enhanced
4.	Medical expenses	4,01,050	7,87,770	Enhanced
5.	Loss of earning power	50,000	50,000	Confirmed
6.	Loss of amenities	-	30,000	Granted
	Total	5,82,550	11,01,770	Enhanced by Rs.5,19,220/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,82,550/- is hereby enhanced to Rs.11,01,770/- 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 necessary Court fee, if any, on the enhanced compensation. The 2nd 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge
Motor Accident Claims Tribunal
Tindivanam.

Copy to

The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.36370
+1cc to Mr.K.Moorthy, Advocate, S.R.No.36640

C.M.A.No.3639 of 2013

SPD(CO)
CS/05/08/2021