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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.450 of 2013

S. Subramaniam

.. Appellant

Vs.

1.E. Karthikeyan

(R1 remained exparte before the Tribunal)

2.M/s. ICICI Lombard General Insurance Co. Ltd.,

Chhottabhai Centre, 140, Nungambakkam High Road,

Chennai 600 034.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2011, made in M.C.O.P. No.1819 of 2008, on the file of the Additional District and Sessions Judge, III Fast Track Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. T.G. Balachandran

For Respondents: Mr. J. Michael Visuvasam (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 12.12.2011, made in M.C.O.P. No.1819 of 2008, on the file of the Additional District and Sessions Judge, III Fast Track Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.1819 of 2008, on the file of the Additional District and Sessions Judge, III Fast Track Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.01.2008.



3.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 respondents as owner and insurer of the offending vehicle to jointly and severally pay a sum of Rs.1,17,085/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.12.2011, made in M.C.O.P. No.1819 of 2008, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and fracture. P.W.2 Doctor assessed the disability of the appellant as 45%. Due to the injuries and disability, the appellant was forced to resign the job from M/s.Sathyam Computers and seek employment in a different company viz., HCL Technologies. The Tribunal failed to award compensation under conventional damages liberally. The appellant completed his MBA only in the year 2010, belatedly due to the injuries and disability. The appellant could not drive the two wheeler and could not travel to foreign countries. A lump sum amount of Rs.25,000/- awarded by the Tribunal for pain and suffering, transportation and extra nourishment is meagre. The Tribunal ought to have awarded compensation separately for pain and suffering, extra nourishment and transportation. The Tribunal has failed to award compensation towards future medical expenses. The appellant lost amenities of his life due to fracture sustained by him in the right leg. The Tribunal failed to award any amount towards loss of amenities and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that considering the nature of injuries, treatment taken and disability, the Tribunal awarded consolidated sum towards pain and suffering, transportation and extra nourishment and separately towards disability. The appellant has not proved that he lost amenities and lost income by joining in another company. Hence, he is not entitled to any enhancement and prayed for dismissal of the appeal.

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

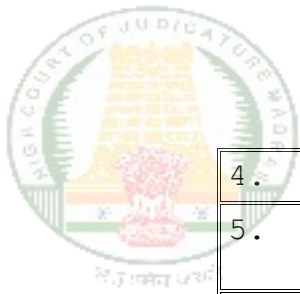
8.It is the contention of the learned counsel appearing for the appellant that the appellant is entitled to compensation for



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conventional heads and damages liberally, since he got alternative employment and also entitled for enhancement of compensation under other heads. From the materials on record, it is seen that the appellant has not proved that due to the injuries and disability, he was forced to resign from Sathyam Computers, where he was working at the time of accident and joined in HCL Technologies. The appellant has also not proved that he is getting lesser salary than what he was receiving from Sathyam Computers. In any event, due to the injuries and disability, the appellant would not have worked atleast for a period of two months. Considering the date of accident, salary certificate and leave particulars marked as Exs.P12 to P14, a sum of Rs.20,000/- is granted towards loss of income for two months. The appellant has also not proved that he required future medical treatment. Considering the above materials, he is not entitled to any amount towards future medical expenses. The appellant contended that he has taken treatment as in-patient in Hospital from 27.01.2008 to 02.02.2008 and produced Ex.P3 - discharge summary to prove the same. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken, nature of injuries and disability, a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities. The lump sum amount of Rs.25,000/- awarded by the Tribunal for pain and suffering, transportation and extra nourishment is meagre and the same is modified as, Rs.15,000/- towards pain and suffering, Rs.7,500/- towards transportation and Rs.10,000/- towards extra nourishment. The amounts awarded by the Tribunal under 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
1.	Disability	90,000/-	90,000/-	Confirmed
2.	Pain and suffering, Transportation and extra nourishment	25,000/-	15,000/- 7,500/- 10,000/-	Enhanced
3.	Medical expenses	2,085/-	2,085/-	Confirmed



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4.	Loss of income	-	20,000/-	Granted
5.	Attendant charges	-	10,000/-	Granted
6.	Loss of amenities	-	10,000/-	Granted
	Total	1,17,085/-	1,64,585/-	Enhanced by Rs.47,500 /-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,17,085/- is enhanced to Rs.1,64,585/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.1819 of 2008. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

gsa
To

1.The Additional District & Sessions Judge,
III Fast Track Court, Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.T.G. Balachandran, Advocate SR.No.40027

+1cc to Mr.J. Michael Visuvasam, Advocate SR.No.40754

C.M.A.No.450 of 2013

SPD (CO)
GMY (26/08/2021)