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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.646 of 2013

Joseph Stalin

.. Appellant/Petitioner

Vs.

1.P. Balasubramaniyan

2.Sri Ram General Insurance Co. Ltd.,

1003, E.S. Riico Industrial Area,

Sitapura, Jaipur 302 022,

Rajasthan State.

.. Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2012, made in M.C.O.P. No.430 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Perambalur.

For Appellant : Mr.S.R.Varun Karthik
for M/s.C.Jagadish

For Respondents : No appearance (For R1)
Mr.S.Dhakshnamoorthy (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 27.09.2012, made in M.C.O.P. No.430 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Perambalur.

2.The appellant-claimant filed M.C.O.P. No.430 of 2010, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Perambalur, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.03.2010.



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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 Vehicle belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle to pay a sum of Rs.1,49,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 27.09.2012, made in M.C.O.P. No.430 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant sustained grievous head injuries and permanent disability in the accident. The appellant proved that he took treatment for 1½ months initially as in-patient and thereafter continued treatment as out-patient. The Tribunal ought to have awarded compensation for loss of earning during treatment period atleast for six months at the rate of Rs.5,000/- per month. As per Schedule, the appellant is entitled to loss of income for 52 weeks. The appellant filed medical bills as Exs.P5 and P6 to prove the expenses incurred during treatment. The Tribunal omitted to award compensation of Rs.59,000/- which appellant paid towards Doctor fees and clinical examination, as per Ex.P5. The Tribunal having held that the appellant suffered injuries in the skull, failed to award compensation towards future medical expenses. The Tribunal ought to have awarded a sum of Rs.1,00,000/- towards future medical expenses. The appellant was aged 23 years at the time of accident. The Tribunal ought to have awarded more compensation and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant did not possess valid driving license at the time of accident. The Tribunal considering the oral and documentary evidence, awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the appellant, in reply, submitted that the accident has occurred only due to negligence on the part of the driver of the 1st respondent and appellant proved the same. The 2nd respondent has not filed any appeal contending that the appellant did not possess driving license and he was responsible for the accident and prayed for allowing the appeal.

8. Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.



10. From the materials on record, it is seen that it is the contention of the appellant that in the accident, he suffered head injury and other multiple injuries. To prove the same, the appellant examined himself as P.W.1 and examined P.W.2 - Doctor who deposed about the nature of injuries and disability suffered by the appellant. The Tribunal accepted the disability assessed and certified by P.W.2 - Doctor and granted compensation towards permanent disability, at the rate of Rs.2,000/- per percentage for 36% disability. The accident is of the year 2010. The appellant is entitled to a sum of Rs.3,000/- per percentage for 36% disability. Hence, the amounts granted by the Tribunal towards permanent disability is modified to Rs.1,08,000/- [Rs.3,000/- x 36%]. The appellant has taken treatment as in-patient in K.M.C. Hospital, Trichy, from 17.03.2010 to 30.03.2010. He filed Ex.P2 - discharge summary to prove the same. Due to the injuries and treatment taken, the appellant would not have attended his work atleast for a period of 6 months. Hence, the appellant is entitled to compensation for loss of income for 6 months. The Tribunal fixed the notional income of the appellant as Rs.5,000/-. Thus, the amounts awarded by the Tribunal towards loss of income is modified as Rs.30,000/- [Rs.5,000/- x 6 months]. The amounts granted by the Tribunal towards extra nourishment, transportation and loss of amenities are meagre and the hence the same are enhanced to Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attendant charges and future medical expenses. Considering the period of treatment taken and nature of injuries, a sum of Rs.10,000/- each is granted towards attendant charges and future medical expenses. The appellant filed Exs.P5 and P6 - medical bills for the amounts spent by him for treatment. The Tribunal granted a sum of Rs.48,000/- towards medical bills, as per Ex.P6. The Tribunal failed to consider Ex.P5 filed by the appellant for the amounts spent towards Doctor's fees and clinical examination. A perusal of Ex.P5 shows that the appellant has spent Rs.59,000/- towards fees for Doctor and clinical examination. Hence, the appellant is entitled to said sum of Rs.59,000/- towards medical bills, in addition to the amount awarded by the Tribunal towards medical bills. Thus, the amount awarded by the Tribunal towards medical bills is modified as Rs.1,07,000/- [Rs.48,000/- + Rs.59,000/-]. The amounts awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	10,000/-	30,000/-	Enhanced
2.	Transportation	2,000/-	5,000/-	Enhanced
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Pain and suffering	10,000/-	10,000/-	Confirmed
5.	Permanent disability	72,000/-	1,08,000/-	Enhanced
6.	Medical bills	48,000/-	1,07,000/-	Enhanced
7.	Loss of amenities	5,000/-	10,000/-	Enhanced
8.	Future medical expenses	-	10,000/-	Granted
9.	Attendant charges	-	10,000/-	Granted
	Total	1,49,000/-	2,95,000/-	Enhanced by Rs.1,46,000/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,49,000/- is enhanced to Rs.2,95,000/- 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, 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.430 of 2010. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,46,000/-. No costs.

Sd/-

Assistant Registrar(CS V)

dt 09/04/2021

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Perambalur.

2. The Section Officer,
V.R Section,
High Court, Madras. (2 Copies)

+1cc to Mr.C.Jagadish, Advocate, S.R.No.36790

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.36669

C.M.A.No.646 of 2013

MP (CO)
HS (16/08/2021)