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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1555 of 2020

Kalaimani

.. Appellant/Petitioner

Vs.

1. Vignesh
2. Revathi
3. United India Insurance Co. Ltd.,
Oriental Complex, BO 2, 77,
Arunachala Aasari Street,
Salem - 636 001.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 26.02.2020, made in M.C.O.P.No.1787 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.C.Paraneedharan

For Respondent 3 : Mr.S.Arunkumar

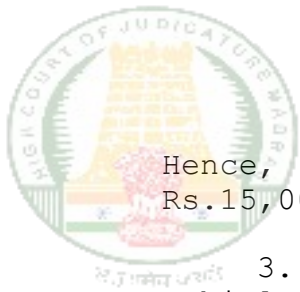
J U D G M E N T

Feeling not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this appeal is as follows:

(i) On 06.06.2018, at around 12.00 noon, while the appellant/claimant was riding his two wheeler bearing Registration No.TN-93-A-4478 in Memchery-Salem main road, a tripper lorry bearing Registration No.TN-3-AL-5566, owned by the second respondent which was driven by the first respondent herein came in a rash and negligent manner and dashed against the appellant/claimant and he sustained serious injuries.

(ii) At the time of the accident, he was 26 years old and was working as a welding mechanic, earning a sum of Rs.17,000/- per month. In the said accident, he suffered 35% disability.



Hence, he filed a claim petition before the Tribunal seeking Rs.15,00,000/- as compensation.

3. The first respondent who is the driver of the offending vehicle and the second respondent who is the owner of the offending vehicle remained ex parte. The third respondent insurance company contested the claim petition by stating that the accident had taken place due to the rash and negligent driving of the appellant/claimant and hence the insurance company is not liable to pay compensation. Further, while the appellant/claimant tried to overtake a car in a high way without noticing the lorry, he only dashed against the lorry and hence he has also contributed to the accident. That apart, the insurance company has also contested the compensation sought by the claimant as highly excessive.

4. In order to prove the claim, the appellant/claimant examined himself as P.W.1 and marked as many as eleven documents as Exs.P1 to P11. On the side of the respondents no witness was examined and no document was marked. The disability certificate issued by the Medical Board was marked as Ex.C1.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the first respondent. As the offending vehicle was insured with the third respondent the second and third respondents are jointly and severely liable to pay compensation. So far as the quantum of compensation is concerned, the Medical Board issued disability certificate stating that he suffered 35% permanent partial disability and the Tribunal accepted the disability certificate issued by the Medical Board at 35% and awarded a sum of Rs.1,05,000/- towards disability. The Tribunal has awarded a sum of Rs.40,000/- towards pain and suffering; Rs.40,000/- towards loss of amenities; Rs.2,94,056/- towards medical expenses; Rs.48,000/- towards loss of income; Rs.15,000/- towards transport expenses; Rs.30,000/- towards extra nourishment; Rs.15,000/- towards attender charges and Rs.1,000/- towards damage to clothes, thus, totalling a sum of Rs.5,88,056/- was awarded as compensation. Being aggrieved on the compensation awarded by the Tribunal at Rs.5,88,056/-, the appellant/claimant has filed the present appeal seeking enhancement.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. The accident has taken place in the year 2018 and at the time of the accident, the appellant/claimant suffered the following injuries:



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"(i) Grade III A fracture right distal femur with fracture both bones right leg with decreased vascularity;

(ii) Right floating knee - on external fixator with skin necrosis."

8. The Medical Board assessed the disability at 35% and it has also stated that there are deformity in the right knee and he finds difficulty in sitting and squatting with pain. It is also stated that the appellant/claimant was working as a welding mechanic and he was aged about 25 years at the time of the accident. Even though, it is stated that he was earning Rs.17,000/- per month, there is no acceptable evidence to substantiate the same. Therefore, the Tribunal fixed the notional monthly income at Rs.8,000/-. That apart, the Tribunal also accepted the disability assessed by the Medical Board at 35%. The Tribunal following a Division Bench Judgement of this Court, fixed a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,05,000/- towards disability. The appellant is a young man aged about 25 years old and as a welder he used to sit and squat while doing welding work, due to the injuries suffered by him, it will be difficulty for him to sit and squat and also he suffered deformity in the right knee which is a permanent partial disability. In the said circumstances, multiplier method cannot be applied for calculating future loss of income. However, considering the peculiar circumstances of this case, this Court is of the view that instead of awarding Rs.3,000/- per percentage, it is a fit case to award Rs.5,000/- per percentage of disability. Hence, for permanent partial disability a sum of Rs.1,75,000/- (35% x 5000) is now awarded instead of Rs.1,05,000/- awarded by the Tribunal.

9. Admittedly, the appellant/claimant was admitted in the hospital for 24 days and has also underwent surgery, hence a sum of Rs.50,000/- has been awarded towards pain and sufferings instead of Rs.40,000/- awarded by the Tribunal. For loss of amenities a sum of Rs.50,000/- has been awarded instead of Rs.40,000/- awarded by the Tribunal. In view of the injuries suffered, it is stated that he has been bedridden for six months and as a welder he can easily earn a sum of Rs.10,000/- per month. Hence he is entitled for a sum of Rs.60,000/- towards loss of income instead of Rs.48,000/- awarded by the Tribunal. Towards transport charges, as he has taken treatment for longer time, hence a sum of Rs.25,000/- is awarded instead of Rs.15,000/- awarded by the Tribunal. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.



10. In view of the above, the compensation awarded by the Tribunal is modified as follows:

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Sl . No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Disability	1,05,000	1,75,000	Enhanced
2.	Pain and Sufferings	40,000	50,000	Enhanced
3.	Loss of amenities	40,000	50,000	Enhanced
4.	Medical expenses	2,94,056	2,94,056	Confirmed
5.	Loss of Income	48,000	60,000	Enhanced
6.	Transport expenses	15,000	25,000	Enhanced
7.	Extra nourishment	30,000	30,000	Confirmed
8.	Attender Charges	15,000	15,000	Confirmed
9.	Damage to clothing	1,000	1,000	Confirmed
	Total	5,88,056	7,00,056 (Rounded as Rs.7,00,000)	Enhanced by Rs.1,11,944/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,88,056/- is hereby enhanced to Rs.7,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The third respondent / insurance company 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 to the credit of M.C.O.P.No.1787 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal.



The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

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Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.2,
Salem.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.36544

C.M.A.No.1555 of 2020

NMI (CO)
HS(05/08/2021)