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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.205 of 2014

Mohan

..Appellant/Petitioner

Vs.

1. Manager,
M/s. Reddy Structures Private Limited,
Mahaveer Tower, 24th Main, 15th Cross,
J.B.Nagar, 6th Phase,
Bangalore.

2. Manager,
HDFC General Insurance Company Limited,
5th Floor, Express Towers,
Natiman Point,
Mumbai - 400 021.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2011 made in M.C.O.P.No.623 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R1 : No appearance

For R2 : Mr.E.Rajadurai
for Ms.M.B.Gopalan Associates

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 29.03.2011 made in M.C.O.P.No.623 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai.

3.The appellant is the claimant in M.C.O.P.No.623 of 2007



on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.04.2007.

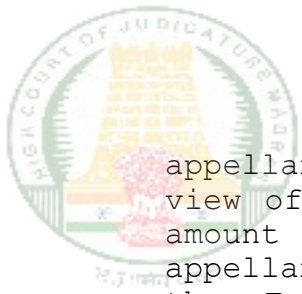
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4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,66,000/- as compensation to the appellant.

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

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered fracture in left knee with dislocation in the patella and multiple injuries all over the body. Initially he has taken treatment at Government Hospital, Thiruvannamalai and thereafter he was referred to Government Hospital, Royapettah. He has taken treatment as inpatient from 24.04.2007 to 10.05.2007 and underwent surgery on 04.05.2007 and continued his treatment as outpatient in the same hospital. The Tribunal failed to consider the evidence of P.W.1 and P.W.2/Doctor and the documents marked by the appellant and awarded only a sum of Rs.1,66,000/- as compensation. P.W.2/Doctor assessed the disability of the appellant at 35% and deposed that the fracture was malunited and bended in shape, he cannot straighten his leg and limping while walking. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The appellant was working as Conductor in Government bus and was earning a sum of Rs.17,436.50 per month. The compensation awarded by the Tribunal towards loss of income is meagre. The amounts awarded by the Tribunal towards extra nourishment, transportation and attendant charges are meagre. The Tribunal has not awarded any amount towards medical expenses. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for a the 2nd respondent-Insurance Company contended that the sum of Rs.90,000/- awarded by the Tribunal towards 35% disability is excessive. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, the appellant is not entitled to any amount towards loss of earning capacity by adopting multiplier method. In the claim petition, the appellant has claimed that he was working as Maistry, whereas in the award, the Tribunal has mentioned that the



appellant was working as Conductor in the Government bus. In view of the contradiction, the appellant is not entitled to any amount towards loss of income. The injuries sustained by the appellant are only simple in nature and the amounts awarded by the Tribunal towards extra nourishment, transportation and attendant charges are not meagre. The appellant has taken treatment only in the Government Hospital and hence, he is not entitled to any amount towards medical expenses. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

8. Though notice has been served on the 1st respondent and its name is printed in the cause list, there is no representation on behalf of the 1st respondent either in person or through counsel.

9. 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.

10. From the materials available on record, it is seen that in the accident the appellant suffered fracture in left knee with dislocation in the patella and multiple injuries all over the body. P.W.2/Doctor examined the appellant and assessed that appellant suffered 35% disability. The appellant has not proved that he suffered loss of earning and functional disability. On the other hand, he has marked Ex.P8/salary certificate for the month of November 2010. He admitted in his evidence that he is doing work as Conductor. In view of these admitted facts, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal accepted the disability certificate issued by P.W.2/Doctor and awarded a sum of Rs.90,000/- towards disability. The accident is of the year 2007. The appellant is entitled to only Rs.70,000/- for 35% disability. In the absence of any documents with regard to loss of income during treatment period, the Tribunal awarded a sum of Rs.60,000/- towards loss of income during treatment period. In view of the excess amounts awarded by the Tribunal towards disability and loss of income, the appellant is not entitled to any enhancement under these heads. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, attendant charges and transportation are meagre and the same are enhanced to Rs.5,000/-, Rs.7,000/- and Rs.5,000/- respectively. The appellant has taken treatment at Government Hospital, Thiruvannamalai and thereafter he was referred to Government Hospital, Royapettah and has taken treatment as inpatient from 24.04.2007 to 10.05.2007 and underwent surgery on 04.05.2007 and continued his treatment as outpatient in the same hospital. The Tribunal has not awarded any amount towards medical expenses. Though the appellant has taken



treatment in Government Hospital, he would have spent some amount towards medical expenses. Therefore, a sum of Rs.10,000/- is awarded by this Court towards medical expenses. The amount awarded by the Tribunal towards pain and sufferings is just and reasonable and hence, the same is 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 sufferings	10,000/-	10,000/-	Confirmed
3.	Loss of income	60,000/-	60,000/-	Confirmed
4.	Attendant charges	2,000/-	7,000/-	Enhanced
5.	Extra nourishment	2,000/-	5,000/-	Enhanced
6.	Transportation	2,000/-	5,000/-	Enhanced
7.	Medical expenses	-	10,000/-	Granted
	Total	Rs.1,66,000/-	Rs.1,87,000/-	Enhanced by Rs.21,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,66,000/- is hereby enhanced to Rs.1,87,000/- 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 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.623 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai. On such deposit, the appellant is permitted to withdraw the 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. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.39406

C.M.A.No.205 of 2014

RR(CO)
RGA(14/09/2021)