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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2168 of 2014

Nithyanandham

.. Appellant/Petitioner

Vs.

1.V. Murugesan

2.New India Insurance Co. Ltd.,
No.45, Moore Street,
Chennai 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.02.2009, made in M.C.O.P. No.303 of 2007, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.R.Kishore
for M/s.A.N.Viswanatha Rao

For Respondents : Mr.R.Neethi Perumal (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 13.02.2009, made in M.C.O.P. No.303 of 2007, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.303 of 2007, on the file of the IV Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.01.2006.



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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle to pay a sum of Rs.2,21,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 13.02.2009, made in M.C.O.P. No.303 of 2007, 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 inter condylar fracture at right femur and multiple injuries all over the body and has taken treatment as in-patient at Government Stanley Hospital from 02.01.2006 to 30.01.2006 and subsequently, at Star Bone and Joint Centre in two different spells viz., from 16.10.2006 to 03.11.2006 and 07.09.2007 to 22.09.2007. The appellant examined P.W.2 Doctor, who examined the appellant and assessed that the appellant suffered 40% disability. P.W.2 Doctor deposed about the nature of injuries and disability suffered by the appellant. The Tribunal ought to have awarded compensation towards disability at the rate of Rs.2,500/- per percentage, instead of Rs.1,000/- per percentage. At the time of accident, the appellant was working as a False Ceiling Contractor and was earning a sum of Rs.8,000/- per month. Due to the injuries sustained in the accident, he could not continue his work as he was doing earlier. The Tribunal awarded only meagre amount towards loss of income. The Tribunal ought to have considered the provisions of II Schedule of the Motor Vehicles Act and awarded compensation towards loss of future earnings under the provisions of Employees' Compensation Act. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2 Doctor and disability certificate issued by him, accepted the percentage of disability assessed by P.W.2 Doctor and rightly awarded compensation towards disability at the rate of Rs.1,000/- per percentage for 40% disability. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation towards loss of future earning power. The accident is of the year 2006. The compensation granted towards disability is not meagre. In the absence of any material evidence produced by the appellant to prove his avocation and income and the Tribunal fixed a sum of Rs.8,000/- per month, as notional income, as claimed by him. The same is not meagre. The appellant has not made out any case for

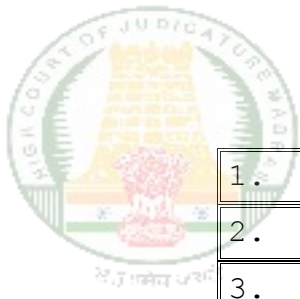


enhancement of the compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that it is the contention of the learned counsel appearing for the appellant that in the accident, the appellant sustained fractures and grievous injuries all over the body. To prove the nature of injuries and disability, the appellant examined himself as P.W.1 and examined P.W.2 Doctor. P.W.2 Doctor examined the appellant and certified that the appellant suffered 40% disability and issued Ex.P8/disability certificate to that effect. The Tribunal considering the evidence of P.W.2 Doctor and the disability certificate issued by him, awarded compensation towards disability at the rate of Rs.1,000/- per percentage for 40% disability. The appellant has not proved that he suffered functional disability and loss his earning capacity. In the absence of any materials evidence, the appellant is not entitled to any compensation towards loss of future earning power by adopting multiplier method. The Tribunal in addition to the amount of Rs.40,000/- awarded for disability, has awarded a sum of Rs.72,000/- towards loss of earning. In view of the above, the appellant is not entitled for any enhancement towards disability. For the injuries suffered in the accident, the appellant has taken treatment as in-patient at Government Stanley Hospital from 02.01.2006 to 30.01.2006 and subsequently, at Star Bone and Joint Centre in two different spells viz., from 16.10.2006 to 03.11.2006 and 07.09.2007 to 22.09.2007. The Tribunal has awarded only meagre amounts towards attendant charges, transportation and extra nourishment. Considering the nature of injuries and period of treatment taken by the appellant, the same are enhanced. Rs.10,000/- each is granted towards attendant charges and extra nourishment and Rs.7,500/- towards transportation. The Tribunal has not awarded any amount towards loss of amenities. Considering the disability suffered by the appellant, he is entitled to a sum of Rs.10,000/- towards loss of amenities. 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



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1.	Loss of earning	72,000/-	72,000/-	Confirmed
2.	Transportation	2,000/-	7,500/-	Enhanced
3.	Extra nourishment	2,000/-	10,000/-	Enhanced
4.	Medical expenses and future medical expenses	50,000/-	50,000/-	Confirmed
5.	Mental agony	20,000/-	20,000/-	Confirmed
6.	Attendant charges	5,000/-	10,000/-	Enhanced
7.	Pain and suffering	30,000/-	30,000/-	Confirmed
8.	Permanent disability	40,000/-	40,000/-	Confirmed
9.	Loss of amenities	-	10,000/-	Granted
	Total	2,21,000/-	2,49,500/-	Enhanced by Rs.28,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,21,000/- is enhanced to Rs.2,49,500/- together with interest at the rate of 9.5% 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, 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. 303 of 2007. 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 V)
09/04/2021

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Sub Assistant Registrar

gsa



To

1. The IV Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.41888
+1cc to Mr.R.Neethi Perumal, Advocate, S.R.No.41518

C.M.A.No.2168 of 2014

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