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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.2457 of 2014

Nagaraj

.. Appellant

Vs.

1.Syed Usman

2.The Branch Manager
New India Assurance Company Ltd.
Bommasandra, Bangalore.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2010 made in M.C.O.P.No.512 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

For Appellant : Mr.K.Prasanna
for Mr.M.Sriram

For R2 : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 05.07.2010 made in M.C.O.P.No.512 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No.512 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. He filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2005.



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 both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.1,24,573/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that the appellant was working as a building mason and was earning a sum of Rs.6,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- as monthly income of the appellant. In the accident, the appellant suffered fractures of shaft of femur left side and maxilla and multiple injuries all over the body. The appellant examined himself as P.W.1 and the Doctor as P.W.2 to prove the injuries. P.W.2/Doctor examined the appellant and certified that the appellant suffered 47% disability. The Tribunal erroneously reduced the disability assessed by P.W.2/Doctor to 37% and awarded meagre amounts as compensation. Due to the injuries, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method to award compensation towards loss of earning power. The appellant has taken treatment as in-patient in Government Hospital, Hosur, on 30.01.2005 and 31.01.2005 and then in Victoria Hospital, Bangalore, from 31.01.2005 to 11.03.2005. The Tribunal failed to award any compensation towards attendant charges and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Though notice has been served on the 2nd respondent and their name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.

7.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

8.It is the contention of the appellant that in the accident, he suffered fractures of shaft of femur left side and maxilla and multiple injuries all over the body. The appellant examined himself as P.W.1 and the Doctor as P.W.2 to prove the injuries. P.W.2/Doctor examined the appellant and certified that the appellant suffered 47% disability. The Tribunal reduced the disability assessed by P.W.2/Doctor to 37% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant, the assessment made by P.W.2/Doctor is not based on the Indian Medical Guidelines and awarded a sum of Rs.74,000/- towards

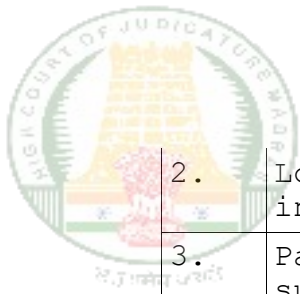


disability at the rate of Rs.2,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not proper and the appellant is entitled to compensation for 44% disability. The appellant has not proved that he suffered functional disability and lost his earning capacity and hence, the appellant is not entitled to compensation by adopting multiplier method. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.88,000/- (44% X Rs.2,000/-).

8(i).According to the appellant, he was working as a building mason and was earning a sum of Rs.6,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and awarded a sum of Rs.13,500/- towards loss of income for three months. The accident is of the year 2005 and the notional income fixed by the Tribunal is not meagre. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.27,000/- (Rs.4,500/- X 6).

8(ii). According to the appellant, he has taken treatment as in-patient in two spells, i.e. at Government Hospital, Hosur, on 30.01.2005 and 31.01.2005 and then in Victoria Hospital, Bangalore, from 31.01.2005 to 11.03.2005. The appellant has marked two discharge summaries as Exs.P3 and P4, to prove the same. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.20,000/- each are awarded towards attendant charges and loss of amenities. A sum of Rs.5,000/- altogether awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are hereby enhanced to Rs.5,000/- towards transportation and Rs.15,000/- towards extra nourishment. The amounts awarded by the Tribunal under all 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 or reduced
1.	Disability	74,000	88,000	Enhanced



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2.	Loss of income	13,500	27,000	Enhanced
3.	Pain and suffering	20,000	20,000	Confirmed
4.	Medical bills	12,073	12,073	Confirmed
5.	Transportation and extra nourishment	5,000	5,000 15,000	Enhanced
6.	Attendant charges	-	20,000	Granted
7.	Loss of amenities	-	20,000	Granted
	Total	1,24,573	2,07,073	Enhanced by Rs.82,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,24,573/- is hereby enhanced to Rs.2,07,073/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.82,500/- enhanced by this Court as per the order of this Court dated 22.08.2014 made in M.P.No.1 of 2013 in C.M.A.SR.No.73376 of 2013. The respondents are jointly and severally 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. 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. No costs.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

kj

To

1. The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Krishnagiri.



Copy To

The Section Officer
V.R.Section
High Court, Chennai.

+1cc to M/s.Mukud R Pandian, Advocate SR.No.40188

C.M.A.No.2457 of 2014

VSN II (CO)
GMY (25/08/2021)