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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2574 of 2017

G.Hari Hara Kumar

..Appellant/Claimant

Vs.

1.Patel KNR (JV)

2.The New India Assurance Company 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 19.12.2016 made in M.C.O.P.No.780 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.K.Vinod
: No appearance for R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 19.12.2016 made in M.C.O.P.No.780 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

2.The brief facts of the case are as follows:

On 11.05.2013 at about 09.15 a.m., the appellant was riding the motorcycle bearing Registration No.TN 20 CW 7698, from West to East direction on the Poonamallee High Road, Velappanchavadi, near Savitha Dental Hospital, Chennai. At that time, the lorry bearing Registration No.KA 01 B 9056, came in a rash and negligent manner and dashed against the motorcycle, as a result of which, the appellant sustained grievous and multiple injuries all over the body. The appellant filed a claim petition before the Tribunal, claiming a sum of Rs.40,00,000/- as compensation. The Tribunal, considering the pleadings, oral and documentary



evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the lorry belonging to the 1st respondent and insured with the 2nd respondent/Insurance Company and directed the 2nd respondent/Insurance Company being insurer of the said vehicle, to pay a sum of Rs.15,40,600/- with interest at the rate of 9% per annum from the date of petition, as compensation to the appellant.

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

4. The learned counsel appearing for the appellant has contended that the appellant sustained (i) right upper limb brachial plexus palsy with loss of sensation over arm (ii) exploration, nerve transfer ulnar to musculocutaneous and spinal accessory to suprascapular and (iii) right side of head injury. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him, who deposed that the appellant suffered various disabilities. But the Tribunal has taken only 70% disability without any basis. The learned counsel has submitted that the Tribunal ought to have fixed 100% loss of earning power. The Tribunal has not awarded any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre, according to the learned counsel.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company has contended that the Tribunal, considering the nature of injuries sustained by the appellant, fixed the disability of the appellant at 70% and awarded the compensation by applying multiplier method and granted amounts under different heads, which are just and reasonable and hence, the same warrants no interference by this Court. The appellant has not made out any case for enhancement of compensation, according to the learned counsel.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel for the 2nd respondent/Insurance Company and perused the materials available on record, carefully.

7. Considering the injuries and the disabilities suffered by the claimant, this Court is of the considered view that the compensation awarded by the Tribunal towards loss of income, only requires interference. The amounts awarded towards other heads are confirmed, as the same are just and reasonable.



8.It was put forth on behalf of the claimant before the Tribunal that the appellant/injured sustained grievous and multiple injuries all over the body. To prove the same, he examined himself as P.W.1, through him, Ex.P2, Ex.P3, Ex.P4, Ex.P5 and Ex.P15 documents were marked and he also examined P.W.2/Doctor, who has taken x-rays and after considering the medical report, certified that the appellant has suffered 40% disability in respect of his right hand, 80% disability in respect of right elbow, 40% disability in respect of right hand wrist, 60% disability in respect of inner hand and totally he suffered 70% disability in respect of his right hand. In his cross examination, P.W.2/Doctor has admitted that the appellant suffered (i) right upper limb brachial plexus palsy with loss of sensation over arm (ii) exploration, nerve transfer ulnar to musculocutaneous and spinal accessory to suprascapular and (iii) right side of head injury. The Tribunal, considering the evidence of Ex.P8 and Ex.P17, fixed the disability of the appellant at 70% which does not require any interference in the hands of this Court. The Tribunal has also correctly fixed the monthly income of the claimant and adopted the correct multiplier, but it has not taken into consideration enhancement towards future prospects, while arriving at the loss of income. Considering the grievous injuries and the disabilities suffered by the claimant, it would be appropriate to have 40% enhancement towards future prospects. If that is done, the compensation towards loss of income works out to Rs.17,49,300/- (Rs.8,750 + Rs.3,500 FP x 12 x 17 x 70%). Thus, the details of the modified compensation are as follows:

S.No	Description	Amount awarded by this Court (Rs)
1.	Loss of income	17,49,300
2.	Pain and suffering	50,000
3.	Extra nourishment	10,000
4.	Transportation charges	15,000
5.	Medical expenses	2,14,100
6.	Damage to clothes	2,000
	Total	20,40,400

Therefore, the appellant is entitled to the modified compensation of Rs.20,40,400/-. It is made clear that only for the compensation awarded by the Tribunal, ie., Rs.15,40,600/-,



the interest rate shall be 9% per annum from the date of petition. For the enhanced amount of Rs.4,99,800/- the interest rate shall be 7.5% per annum and the same shall be calculated from the date of claim petition.

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9. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The 2nd respondent/Insurance Company is directed to deposit the modified compensation 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 same, on making proper application. It is made clear that the appellant has to pay appropriate Court fee in order to receive the awarded amount.

s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

mtl

To

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

Copy to

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

+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 30845.

C.M.A.No.2574 of 2017

VSNII (CO)

SP(09/09/2021)