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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.60 of 2021

Selvakumar

... Appellant/Petitioner

Vs.

1.Meeran Mohaideen

2.Shanthi

3.National Insurance Company Limited

Royal Towers, 185/1, Meyyanur Road

ARRS multiplex theatre,

Salem-636 004.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2020 made in M.C.O.P.No.844 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R3 : Mr.D.Bhaskaran

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 09.03.2020 made in M.C.O.P.No.844 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.The appellant is claimant in M.C.O.P.No.844 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.04.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, the driver of the Eicher van belonging to the 2nd respondent, fixed 90%



contributory negligence on the part of the 1st respondent, the driver of the Eicher van and fixed 10% contributory negligence on the part of the appellant on the ground that two pillion riders have travelled in the motorcycle of the appellant at the time of accident, awarded a sum of Rs.4,57,574/- as compensation to the appellant and directed the 3rd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.4,11,817/- being 90% of the award amount 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 in the accident, the appellant suffered multiple fractures in left rib, left medial malleolus, C7 left transverse process of vertebra, dorsal vertebral and bilateral lungs laceration with left lung collapse. The appellant has taken treatment in VIMS Hospital, Salem as in-patient from 30.04.2017 to 05.05.2017 and then in Seelanaickenpatty, Salem, from 05.05.2017 to 17.05.2017, underwent surgery and screws were fixed. At the time of accident, the appellant was working as a coolie and was earning a sum of Rs.12,000/- per month. Due to the injuries, he could not do the work as he was doing earlier. The Medical Board after examining the appellant, certified that the appellant suffered 15% disability and issued Ex.C1/disability certificate. The Tribunal awarded only a meagre sum of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.5,000/- per percentage of disability. The appellant is still taking treatment for the injuries and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal after considering the materials on record, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the entire materials on record.

8. It is the case of the appellant that in the accident, he suffered multiple fractures in left rib, left medial malleolus, C7 left transverse process of vertebra, dorsal vertebral and



bilateral lungs laceration with left lung collapse. The appellant has taken treatment in VIMS Hospital, Salem as in-patient from 30.04.2017 to 05.05.2017 and then in Seelanaickenpatty, Salem, from 05.05.2017 to 17.05.2017, underwent surgery and screws were fixed. The Medical Board after examining the appellant, certified that the appellant suffered 15% disability and issued Ex.C1/disability certificate to that effect. The Tribunal fixed the disability at 15% as certified by the Medical Board and awarded a sum of Rs.3,000/- per percentage of disability. The accident is of the year 2017 and the amount awarded by the Tribunal per percentage of disability is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.75,000/- (Rs.5,000/- X 15%). The amounts awarded by the Tribunal towards extra nourishment, attendant charges and damage to clothes and articles are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, attendant charges and damage to clothes and articles are hereby enhanced to Rs.20,000/-, Rs.20,000/- and Rs.3,000/- respectively.

8(i). According to the appellant, he was working as a coolie and was earning a sum of Rs.12,000/- per month. The appellant failed to produce any document to prove the avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant, which is meagre. The accident is of the year 2017 and hence, a sum of Rs.12,000/- is fixed as monthly income as claimed by the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.36,000/- (Rs.12,000/- X 3). The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. 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:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and suffering	15,000	15,000	Confirmed
2.	Loss of income	22,500	36,000	Enhanced
3.	Medical expenses	3,29,074	3,29,074	Confirmed
4.	Transportation	10,000	10,000	Confirmed
5.	Extra nourishment	10,000	20,000	Enhanced
6.	Attendant charges	10,000	20,000	Enhanced
7.	Damage to clothes and articles	1,000	3,000	Enhanced
8.	Loss of amenities	15,000	15,000	Confirmed
9.	Permanent disability	45,000	75,000	Enhanced
	Total	4,57,574	5,23,074	
	90% of the award amount	4,18,816.60 rounded off to 4,11,817	4,70,766.6 rounded off to 4,70,767	Enhanced by Rs.58,950/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,57,574/- is hereby enhanced to Rs.5,23,074/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit a sum of Rs.4,70,767/- being 90% of the compensation 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.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To/

The Special Sub Court No.1,
Motor Accident Claims Tribunal,
Salem.

Copy to

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

+2cc to M/s.T.S.Arthanareeswaran, Advocate Sr.5299

C.M.A.No.60 of 2021

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