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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.195 OF 2021

Ramasamy

.. Appellant/
Petitioner

Vs.

1.Kumar

2.The National Insurance Company Ltd.
2nd floor, Maruthi complex
F-215, Omalur main road
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 05.03.2020 made in M.C.O.P.No.847 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paranthaman

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 05.03.2020 made in M.C.O.P.No.847 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.847 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 27.12.2017.



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 Swaraj mazda vehicle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.1,50,095/- as compensation to the appellant at the first instance and recover the same from the 1st respondent as the Fitness Certificate for the vehicle was not renewed on the date of accident.

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 fracture in 1st metacarpal with severe degloving injury in left hand palm with cut thumb flexor tendons. He has taken treatment as in-patient in Universal hospital, Salem, from 27.12.2017 to 03.01.2018 for eight days and underwent surgery. Due to the injuries sustained in the accident, he could not do the work as he was doing earlier. The Medical Board examined the appellant, certified that he suffered 10% disability and issued Ex.C1/Disability certificate. The Tribunal erred in awarding only a sum of Rs.3,000/- per percentage of disability and the Tribunal ought to have awarded a sum of Rs.5,000/- per percentage of disability. At the time of accident, the appellant was working as a cook and was earning a sum of Rs.12,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.7,500/- as monthly income of the appellant. 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 2nd respondent/Insurance Company contended that the appellant failed to produce document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant, which is excessive. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



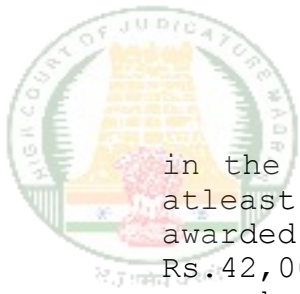
7. Heard though "Video-conferencing" the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.

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8. It is the case of the appellant that in the accident, he suffered fracture in 1st metacarpal with severe degloving injury in left hand palm with cut thumb flexor tendons. The Medical Board examined the appellant, certified that he suffered 10% disability and issued Ex.C1/Disability certificate. The Tribunal fixed the disability at 10% and awarded a sum of Rs.30,000/- towards disability at the rate 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 rise 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.50,000/- (Rs.5,000/- X 10%).

8(i) The appellant has contended that he has taken treatment as in-patient in Universal hospital, Salem, from 27.12.2017 to 03.01.2018 for eight days and underwent surgery. The amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges, damage to clothes and articles and loss of amenities are meagre. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges, damage to clothes and articles and loss of amenities are hereby enhanced to Rs.15,000/-, Rs.15,000/-, Rs.15,000/-, Rs.3,000/- and Rs.20,000/- respectively.

8(ii) It is the contention of the appellant that he was working as a cook and was earning a sum of Rs.12,000/- per month at the time of accident. The appellant failed to substantiate the said contention. In the absence of any material with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant. The accident is of the year 2017 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.14,000/- is fixed as monthly income of the appellant. Due to the injuries sustained



in the accident, the appellant would not have attended the work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.42,000/- (Rs.14,000/- 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. A sum of Rs.54,095/- awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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.	Pain and suffering	10,000	20,000	Enhanced
2.	Loss of income	22,500	42,000	Enhanced
3.	Medical expenses	54,095	54,095	Confirmed
4.	Transportation	7,500	15,000	Enhanced
5.	Extra nourishment	7,500	15,000	Enhanced
6.	Attendant charges	7,500	15,000	Enhanced
7.	Damage to clothes and articles	1,000	3,000	Enhanced
8.	Loss of amenities	10,000	20,000	Enhanced
9.	Permanent disability	30,000	50,000	Enhanced
	Total	1,50,095	2,34,095	Enhanced by Rs.84,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,095/- is hereby enhanced to Rs.2,34,095/- 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 at the first instance and recover the same from the 1st respondent. 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 VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.1
Motor Accident Claims Tribunal
Salem.

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

+1cc to M/S.R.Sreevidhya, Advocate, S.R.No.9153
+2ccs to M/S.T.S.Arthanareeswaran, Advocate, S.R.No.8634

C.M.A.No.195 of 2021

RSI (CO)
PM/15/09/2021