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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3393 of 2008

H.Srinivasalu

... Appellant/Petitioner

Vs.

1.R.Murugesan

2.The New India Assurance Company Limited,
No.80, Arcot Road, Porur,
Chennai - 600 116.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.06.2008 made in M.C.O.P.No.167 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvallur.

For Appellant : Mr.Amar D.Pandiya

For R2 : Mr.J.Chandran

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.06.2008 made in M.C.O.P.No.167 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvallur.

2.The appellant is the claimant in M.C.O.P.No.167 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvallur. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.06.2005.



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 vehicle belonging to 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.3,22,300/- 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 grievous injuries and fracture. He has taken treatment as inpatient from 02.06.2005 to 29.07.2005 at Southern Railway Hospital at Perambur, Chennai. Subsequently, again in the same Hospital, he has taken treatment from 13.10.2005 to 25.10.2005 as inpatient. Due to the injuries and fracture, he could not do his work as he was doing earlier. Before the date of accident, the appellant was working as 'Technologist' Assistant Engineer at Tech Semiconductor Singapore, PTE LTD., No.1 Woodlands Industrial Park, 'D' Street-1, Singapore - 738 799 and was earning a sum of Rs.75,000/- to 80,000/- per month. Due to the injuries and fracture, he lost his job and joined in another Company for lesser pay. Even the said Company also dismissed him from service. To substantiate this, he examined himself as P.W.1 and examined Dr.Saichandran as P.W.2. P.W.2/Doctor is the Doctor who examined the appellant and assessed that he suffered 55% disability and P.W.3/Doctor is the Doctor who treated the appellant. The learned counsel appearing for the appellant filed additional typed set of papers and contended that Doctor advised the appellant to replace the knee and he has to spend more than Rs.8,00,000/- towards future medical expenses. The Tribunal ought to have adopted multiplier method and awarded compensation for loss of earning capacity and prayed for enhancement of compensation.

6.On the other hand, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved his avocation and income by documentary evidence and hence, the compensation awarded by the Tribunal towards loss of income by fixing a sum of Rs.20,000/- as monthly income of the appellant is not meagre. The appellant has not proved that he lost his earning capacity and suffered functional disability and hence, he is not entitled to compensation by adopting multiplier



method. The Tribunal considering the nature of injuries and disability awarded just compensation and hence, the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

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7. First respondent remained ex parte before the Tribunal. Hence, notice to 1st respondent is dispensed with.

8. Heard 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.

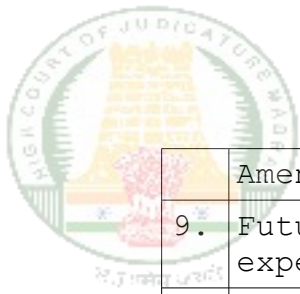
9. From the materials available on record, it is seen that the appellant in the claim petition has claimed that he was working as 'Technologist' Assistant Engineer at Tech Semiconductor Singapore, PTE LTD., No.1 Woodlands Industrial Park, 'D' Street-1, Singapore - 738 799 and was earning a sum of Rs.75,000/- to 80,000/- per month. The appellant also produced materials to show that he was employed in Singapore and he became a permanent resident of Singapore and he was employed in Tech Semiconductor Singapore, PTE LTD., No.1 Woodlands Industrial Park, 'D' Street-1, Singapore - 738 799. The appellant also produced certificate to show that he was earning a sum of 2700 Singapore Dollar. After the accident, the appellant went to Singapore in the year 2006 and joined in other company. The accident occurred in the year 2005. Considering the entire materials stated above, this Court fixes a sum of Rs.35,000/- as monthly income of the appellant. The appellant joined in his company and subsequently is continuing his job from another company from the year 2006. Therefore, the appellant has not lost his earning capacity and has not suffered any functional disability. Hence, the appellant is not entitled for any compensation by adopting multiplier method. But, the appellant would not have worked during treatment period. Hence, the appellant is entitled to compensation for loss of income during treatment period for 6 months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.2,10,000/- (Rs.35,000/- X 6 months). The Tribunal considering the disability certificate issued by P.W.2/Doctor at 55% awarded a sum of Rs.1,10,000/- (Rs.2,000/- X 55% of disability) towards disability at the rate of Rs.2,000/- per percentage of disability and the same is not meagre.

10. The appellant has taken treatment as inpatient from 02.06.2005 to 29.07.2005 at Southern Railway Hospital at Perambur, Chennai. Subsequently, again in the same Hospital, he has taken treatment from 13.10.2005 to 25.10.2005 as inpatient.



However, the Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.15,000/- is awarded towards attendant charges. Considering the nature of injuries and disability, the appellant is entitled to a sum of Rs.25,000/- for loss of amenities. Further, the appellant underwent five surgeries and plates and screws were fixed. For removal of plates and screws, the appellant underwent another surgery. From the additional typed set of papers, it is seen that Dr.G.Sundar Ganesh has issued a certificate dated 01.11.2021 to the effect that appellant need multiple surgeries for him to walk without pain and without any orthotics. Considering the certificate issued by Dr.G.Sundar Ganesh dated 01.11.2021 and photographs, this Court is of the view that appellant is entitled to a sum of Rs.2,00,000/- towards future medical expenses. Further, the appellant has produced invoice for paying cost of materials required for operation underwent by him. The Tribunal rejected the same as the appellant has not produced any receipt for having purchased the materials. It is not in dispute that appellant underwent five surgeries and the Hospital would have required materials for conducting the surgeries. As per Ex.P9 / Medical Bills, the appellant is entitled to a sum of Rs.1,10,000/- towards medical bills. Considering the nature of injuries and period of treatment taken by the appellant, this Court is of the view that 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
1.	Disability	1,10,000/-	1,10,000/-	Confirmed
2.	Pain and sufferings	80,000/-	80,000/-	Confirmed
3.	Extra nourishment	15,000/-	15,000/-	Confirmed
4.	Medical expenses	62,300/-	1,10,000/-	Enhanced
5.	Loss of Income	50,000/-	2,10,000/-	Enhanced
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Attendant charges	-	15,000/-	Granted
8.	Loss of	-	25,000/-	Granted



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	Amenities			
9.	Future medical expenses	-	2,00,000/-	Granted
	Total	Rs.3,22,300/-	Rs.7,70,000/-	Enhanced by Rs.4,47,700/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,22,300/- is hereby enhanced to Rs.7,70,000/-. The appellant is entitled to interest at the rate of 7.5% per annum from the date of petition till the date of deposit only for the amount awarded by the Tribunal. It is made clear that the appellant is not entitled to any interest for the delay period on the amount of Rs.4,47,700/-, now enhanced by this Court as per the order of this Court dated 16.09.2021 made in C.M.P.No.10046 of 2020 in C.M.A.No.3393 of 2008. 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, to the credit of M.C.O.P.No.167 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Thiruvallur. 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 by making necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvallur.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.Amar D.Pandiya, Advocate Sr.62678
+lcc to Mr.J.Chandran, Advocate Sr.63150

C.M.A.No.3393 of 2008

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