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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1179 of 2015 &
M.P.No.1 of 2015

J.Pandian

... Appellant/Petitioner

..Vs..

1.S.Kandasamy
2.The United India Insurance Co. Ltd.,
13-A, Nethaji Road,
Manjakuppam,
Cuddalore.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.2520 of 2011 dated 29th day of January 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Cuddalore District, Cuddalore.

For Appellant : Ms.Vasanthala Mala
for Mr.Um.Ravichandran

For Respondent 2 : Mr.C.Paranthaman

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 29.01.2013 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate, Cuddalore) in MCOP.No.2520 of 2011.

2. Heard Ms.Vasanthala Mala, learned counsel for the Appellant and Mr.C.Paranthaman, learned counsel for the second respondent. Since the first respondent was set exparte before the Tribunal, notice to the first respondent is dispensed with by this Court.



3. The Appellant/claimant has filed this appeal on the following grounds (a) the Tribunal has erroneously fixed the contributory negligence on the part of the Appellant/claimant and (b) the quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation.

4. The Tribunal under the impugned award fixed the contributory negligence of the Appellant/claimant at 50% on the ground that at the time of accident when he was thrown out from the bus, he was under the influence of Alcohol. The Tribunal under the impugned award directed the second respondent to pay the Appellant/claimant 50% out of total compensation of Rs. 92,500/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Disability Compensation	60,000/-
Pain and suffering and mental agony	10,000/-
Transport and extra nutritious	5,000/-
Medical Bills	17,500/-
Total	92,500/-

5. With regard to the contributory negligence fixed by the Tribunal is concerned, the same is confirmed by this Court for the following reasons:

(a) The Appellant/claimant was thrown out of the bus due to which, he sustained injuries. FIR Ex.A1 dated 05.07.2011 states that the Appellant/claimant was under the influence of Alcohol at the time of the accident. He was also standing in the foot-board of the bus.

6. Therefore, this Court is of the considered view that the Tribunal has rightly fixed the contributory negligence of 50% on the part of the Appellant/claimant and therefore, the contention of the Appellant that no contributory negligence can be fixed on him is rejected by this Court.

7. The Appellant/claimant sustained injuries on 03.07.2011 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. In the claim petition, the Appellant/claimant has pleaded that he was a painter, aged 34 years and earning Rs.10,000/- per month at the time of the accident. The Appellant/claimant sustained the following injuries as a result of an accident caused by the



insured vehicle (a) Head injury, (b) Fissure fracture left parietal bone, (c) Patechial Haemorrhage parietal region, (d) Disc bulge C3-C4, C4-C5, C5-C6 with Nerve root compression (e) Chondromalacia of cervical spinal cord. The Doctor (PW2) who examined the Appellant has also given his clinical findings with regard to the injuries sustained by the Appellant/claimant which are as follows: (a) Hemiparesis right side with spastic weakness, (b) Limitation of neck movements with pain, (c) Headache and giddyness on and off, (d) A scar 10x 1 Cm. on the right scalp over the right parietal region and (e) A scar 5 x 4 Cms. on the left knee. The Doctor (PW2) has also given a radiological findings with regard to the injuries of the Appellant/claimant which are as follows: "X-ray skull AP/Lateral view dated 28.07.2012 taken on the Doctor's advice reveals old fracture left parietal bone. X-ray CS AP/Lateral reveals extensive traumatic spondylosis." The Doctor (PW2) in his opinion has also stated that the Appellant/claimant cannot engage himself in any manual labour and will find it difficult in his day-to-day routine. The Doctor (PW2) has assessed the disability of the Appellant/claimant at 50% and the disability certificate dated 28.07.2012 has also been marked as an exhibit before the Tribunal as Ex.A8. As seen from the disability certificate, it is clear that the Appellant/claimant has sustained grievous head injuries. The Appellant/claimant has also been admitted as an in-patient for almost 15 days as seen from the impugned Award. Learned counsel for the Appellant/claimant would further submit that even now, the Appellant/claimant is taking treatment for the injuries. Even though, the Doctor (PW2) has assessed the disability of the Appellant/claimant at 50%, the Tribunal has reduced the disability to 30% without any basis. After giving due consideration to the nature of injuries sustained by the Appellant/claimant which are indeed grievous in nature as seen from the report of the Doctor, the Tribunal ought not to have reduced the disability to 30%, but ought to have accepted the disability of the Appellant/claimant at 50% as assessed by the Doctor.

8. With regard to the contention of the Appellant/claimant that the multiplier method ought to have been adopted by the Tribunal considering the grievous injuries sustained by the Appellant/claimant in the head as well as in the spinal cord, the same cannot be accepted by this Court in view of the fact that before the Tribunal, the Appellant/claimant did not adduce any evidence with regard to the loss of future earning capacity as a result of the injuries sustained by him. Hence, the said contention is rejected by this Court.

9. However, as indicated earlier, the disability of the



Appellant/claimant is assessed by this Court at 50% as per the Doctor's report instead of 30% fixed by the Tribunal. The Tribunal has also awarded a lesser compensation towards disability suffered by the Appellant/claimant and has not considered the year of the accident before assessing the disability compensation. The accident happened on 03.07.2011. If the year of the accident was taken into consideration, the compensation per percentage of disability would have been more. But however, the Tribunal has erroneously failed to consider the year of the accident before assessing the disability compensation. After giving due consideration to the year of the accident, this Court fixes the disability compensation for 50% disability suffered by the Appellant/claimant at Rs.1,50,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

10. With regard to other heads of compensation awarded by the Tribunal is concerned, the same is also low, excepting for awarding a compensation of Rs.17,500/- towards medical expenses which is supported by the medical bills which was marked as Ex.A7 before the Tribunal. The Tribunal has also awarded a compensation of Rs.10,000/- towards pain and suffering and mental agony and Rs.5,000/- towards Transportation cost and extra nourishment which is low and it has to be necessarily enhanced by this Court. Having suffered grievous injuries and having suffered 50% disability, the compensation awarded by the Tribunal towards pain and suffering and mental agony at Rs.10,000/- has to be enhanced to Rs.50,000/- by this Court. Insofar as the compensation awarded by the Tribunal towards transportation cost and extra nourishment at Rs.5,000/- is concerned, the same is also low and it has to be enhanced to Rs.20,000/- towards transportation cost by this Court, in view of the fact that due to the grievous head injuries and spinal cord injuries sustained by the Appellant/claimant, he would have been regularly visiting hospitals for his treatment and would have incurred huge transportation cost and Rs.10,000/- towards extra nourishment. Accordingly, the transportation cost is enhanced to Rs.20,000/- and extra nourishment is enhanced to Rs.10,000/- by this Court instead of Rs.5,000/- towards transportation and extra nourishment fixed by the Tribunal. The Tribunal has erroneously failed to award any compensation towards Attender charges as the nature of injuries sustained by the Appellant/claimant would certainly entitle him for the same. This Court awards a compensation of Rs.25,000/- to the Appellant/claimant towards Attender Charges.

11. The Appellant/claimant was a painter at the time of the accident. He has sustained grievous head injuries and spinal cord injuries as seen from the disability certificate issued by the Doctor. Considering the nature of injuries, the Tribunal



ought to have awarded a compensation towards loss of earning for the Appellant/claimant during the period of treatment. This court is of the considered view that atleast for a period of twelve months, the Appellant/claimant would have remained unemployed due to the injuries sustained by him due to the accident. After giving due consideration to the year of the accident, this Court fixes the notional monthly income of the Appellant/claimant at Rs.6,500/- as the year of the accident is 2011. Therefore the loss of income during the period of treatment for a period of twelve months is fixed by this Court at Rs.78,000/- calculated at Rs.6,500/- per month.

12. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.92,500/- to Rs.3,50,500/- as detailed hereunder:

Heads	Amount Awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Disability Compensation	60,000/-	1,50,000/-
Pain and suffering and mental agony	10,000/-	50,000/-
Transport	5,000/-	20,000/-
Extra nutritious		10,000/-
Medical Bills	17,500/-	17,500/-
Attender Charges	--	25,000/-
Loss of earnings	--	78,000/-
Total	92,500/-	3,50,500/-

13. However since the appeal has been filed by the Appellant/claimant with a delay of 410 days, the Appellant/claimant is not entitled for any interest for the said period.

14. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the Award amount from Rs.92,500/- to Rs.3,50,500/-. The second respondent insurance company is directed to deposit 50% of the award amount i.e., Rs.1,75,250/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, excluding the period of delay in filing the appeal, after deducting the amount already deposited, if any to the credit of MCOP.No.2520 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.2520 of 2011



to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
Cuddalore District, Cuddalore.

+lcc to Mr.UM.Ravichandran, Advocate, S.R.No.26544

+lcc to Mr.C.Paranthaman, Advocate, S.R.No.25821

C.M.A.No.1179 of 2015

CA(CO)
CB(12/10/2021)