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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.72 of 2021

M.Kasthuri

.. Appellant/Petitioner

Vs.

1. Palla Potula Karthik Na

2. Reliance General Insurance Co. Ltd.,
R.O. Legal Department, Reliance House,
No.6, 6th Floor, Haddows Road,
Nungambakkam,
Chennai 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 19.02.2020, made in M.C.O.P. No.8472 of 2015, on the file of the Special Sub Judge No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.U.Chithambaram
for M/s. K.Varadha Kamaraj

For Respondents: M/s. C.Bhuvanasundari (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 19.02.2020, made in M.C.O.P. No.8472 of 2015, on the file of the Special Sub Judge No.2, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No.8472 of 2015, on the file of the Special Sub Judge No.2, Small Causes Court,



(Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by her in the accident that took place on 01.11.2015.

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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.1,54,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.02.2020, made in M.C.O.P. No.8472 of 2015, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries. The Medical Board examined and certified that the appellant suffered 50% disability and issued disability certificate to that effect, which is marked as Ex.C1. The Tribunal without assigning any reasons, erroneously reduced the percentage of disability suffered by the appellant to 35% and granted meagre amount of Rs.70,000/- as compensation towards disability. The learned counsel appearing for the appellant further contended that the Tribunal ought to have fixed a sum of Rs.10,000/- per month as notional income and awarded more compensation towards loss of income, instead of fixing only Rs.9,000/- as monthly income of the appellant. The Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal towards transportation, loss of expectation of life, pain and suffering, attendant charges and extra nourishment are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries suffered by the appellant and the disability certificate issued by the Medical Board, marked as Ex.C1, rightly reduced the percentage of disability to 35% and granted compensation. The appellant has not proved that he suffered functional disability and lost his entire earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.



7. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

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8. From the materials on record, it is seen that it is the case of the appellant that in the accident, he suffered grievous injuries and has taken treatment as in-patient at Hospital from 01.11.2015 to 09.11.2015. The Medical Board examined the appellant and certified that the appellant suffered 50% disability. The Tribunal without assigning any reasons, reduced the percentage of disability to 35% and awarded a sum of Rs.70,000/- towards disability at the rate of Rs.2,000/- per percentage. The same is erroneous. Considering the disability certificate marked as Ex.C1 and the nature of injuries sustained by him, the disability suffered by the appellant is fixed as 50%. 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 2015. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.2,00,000/- [Rs.4,000/- x 50%], at the rate of Rs.4,000/- per percentage for 50% disability. The amount of Rs.5,000/- awarded by the Tribunal towards attendant charges is meagre. Considering the period of treatment taken by the appellant, the same is enhanced to Rs.10,000/-.

9. It is the case of the appellant that he was working as Fruit Seller and was earning a sum of Rs.10,000/- per month. He failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant. The accident is of the year 2015. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of six months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.72,000/- [Rs.12,000/- x 6 months]. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	70,000/-	2,00,000/-	Enhanced
2.	Pain and suffering	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Damage to clothes	2,000/-	2,000/-	Confirmed
6.	Loss of expectation of life	5,000/-	5,000/-	Confirmed
7.	Loss of amenities	10,000/-	10,000/-	Confirmed
8.	Loss of income	27,000/-	72,000/-	Enhanced
9.	Mental agony	5,000/-	5,000/-	Confirmed
10.	Attendant charges	5,000/-	10,000/-	Enhanced
	Total	1,54,000/-	3,34,000/-	Enhanced by Rs.1,80,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,54,000/- is enhanced to Rs.3,34,000/- 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, 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.8472 of 2015. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa



To

1. Motor Accident Claims Tribunal
The Special Sub Court, No.2,
Small Causes Court,
Chennai.
2. The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.5482

C.M.A.No.72 of 2021

MGR (CO)
SU (18/11/2021)