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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1700 of 2013

Sathishkumar

... Appellant/Petitioner

Vs.

1.N.Vidyakar

2.The United India Insurance Company Limited,
New No.75, Old No.9, Shanmugam Road,
Tambaram West,
Chennai - 600 045.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.02.2012 made in M.C.O.P.No.90 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Chengalpattu.

For Appellant : Mr.S.S.Swaminathan
For R1 : No appearance
For R2 : Mrs.R.Rathnathara

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 01.02.2012 made in M.C.O.P.No.90 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Chengalpattu.

2.The appellant is the claimant in M.C.O.P.No.90 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Chengalpattu. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.03.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to



rash and negligent driving by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,75,496/- as compensation to the appellant.

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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 sustained head injury, fracture of both bone right legs, fracture of left maxillary sinus and fracture of left frontal bone and squamous temporal bone. P.W.2 to P.W.4/Doctors examined the appellant and certified that the appellant suffered 40%, 30% and 25% disability respectively totaling 95% disability and issued Exs.P15, P16 & P18 to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability from 95% to 50% and awarded compensation only for 50% disability. The Tribunal ought to have awarded compensation for 95% disability. The appellant has lost his earning capacity and the Tribunal ought to have awarded compensation for loss of earning capacity by adopting multiplier method. At the time of accident, the appellant was aged 22 years, working as A.C.Mechanic and was earning a sum of Rs.15,000/- per month. But, the Tribunal has not awarded any amount towards loss of income. The appellant has taken treatment in the Global Hospital as inpatient for 16 days from 25.03.2010 to 09.04.2010 and the Tribunal has not awarded any amount towards attendant charges, loss of amenities, loss of expectation of life. The amounts awarded by the Tribunal towards pain and sufferings, transportation and extra nourishment are meagre and prayed for enhancement of compensation.

6. Though the 1st respondent entered appearance through counsel, there is no representation for him today.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal fixed the percentage of disability of the appellant at 50% as P.W.2 to P.W.4/Doctors have assessed the percentage of disability for particular part of the body, whereas, the percentage of disability has to be calculated for whole body. Hence, the appellant is not entitled to compensation for 95% disability. The appellant has not proved that he suffered any functional disability or his income was reduced and hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method. The appellant has not produced any material evidence to prove that he lost his income during treatment period. Hence, he is not entitled to any amount towards loss of income during treatment period. The amounts awarded by



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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 in the accident the appellant sustained head injury, fracture of both bone right legs, fracture of left maxillary sinus and fracture of left frontal bone and squamous temporal bone. P.W.2 to P.W.4/Doctors examined the appellant and certified that the appellant suffered 40%, 30% and 25% disability respectively totaling 95% disability and issued Exs.P15, P16 & P18 to that effect. The Tribunal fixed the percentage of disability of the appellant at 50% as P.W.2 to P.W.4/Doctors have assessed the percentage of disability for particular part of the body, whereas, the percentage of disability has to be calculated for whole body. The reason given by the Tribunal for fixing the percentage of disability of the appellant at 50% is proper. The Tribunal has awarded a sum of Rs.1,00,000/- for 50% of disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2010 and the appellant is entitled to a sum of Rs.3,500/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,75,000/- (Rs.3,500/- X 50% disability). The appellant has not proved that he suffered any functional disability or his income was reduced and hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method.

10. It is the contention of the appellant that at the time of accident, he was aged 22 years, working as A.C. Mechanic and was earning a sum of Rs.15,000/- per month. The appellant has not filed any document to prove his avocation and income. Considering the year of accident and nature of work done by the appellant, a sum of Rs.10,000/- per month is fixed as his notional income. The appellant has taken treatment in the Global Hospital as inpatient for 16 days from 25.03.2010 to 09.04.2010 and the Tribunal has not awarded any amount towards loss of income. Considering the period of treatment and nature of work done by the appellant, he would not have attended his work at least for a period of one month. Therefore, the appellant is entitled to a sum of Rs.10,000/- towards loss of income. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings and transportation are meagre and hence, the same are enhanced to Rs.50,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards attendant charges. The appellant is



entitled to a sum of Rs.5,000/- towards attendant charges. The amounts awarded by the Tribunal towards medical expenses and extra nourishment 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	1,00,000/-	1,75,000/-	Enhanced
2.	Pain and sufferings	25,000/-	50,000/-	Enhanced
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Medical expenses	2,44,496/-	2,44,496/-	Confirmed
5.	Transportation	1,000/-	5,000/-	Enhanced
6.	Attendant charges	-	5,000/-	Granted
7.	Loss of Income	-	10,000/-	Granted
	Total	Rs.3,75,496/-	Rs.4,94,496/-	Enhanced by Rs.1,19,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,75,496/- is hereby enhanced to Rs.4,94,496/- 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, to the credit of M.C.O.P.No.90 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Chengalpattu. 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(CS VII)

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Sub Assistant Registrar



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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Chengalpattu.

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

+1cc to Mr.S.S.Swaminathan, Advocate SR.28502

C.M.A.No.1700 of 2013

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