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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.1785 of 2012

P.Pushparaj

.. Appellant

Vs.

1. M/s.Geekay Sales Corporation
No.259-261, Plaza Centre, III Floor,
No.129, G.N.Chetty Road,
Chennai - 600006.

2. M/s. National Insurance Company Ltd.,
DAT-1, Murugesu Naicker Office Complex,
No.66, Greaves Road, Chennai -600006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2011, made in M.C.O.P. No. 3822 of 2008, on the file of the Additional District Judge(FTC-II), Chennai.

For Appellant : Mr. T.G.Balachandran

For Respondents: Mr.G.Udayasankar - R2

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the claimant against the judgment and decree dated 22.07.2011, made in M.C.O.P. No. 3822 of 2008, on the file of the Additional District Judge(FTC-II), Chennai

2. Brief facts of the case is that on 08.09.2008 at about 17.00 hours while the petitioner was crossing Taluk Office road near Little Mount Bus Depot pedestrian crossing, at the time a motor cycle bearing Reg.No.TN01-T-5693 came in a rash and negligent manner and hit against the claimant. Thereby, the



claimant sustained grievous injury. The accident had occurred only due to the 1st respondent's vehicle by its rider. Hence he filed the claim petition before the tribunal, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him. The tribunal after considering the oral and documentary evidence, has fixed the liability on the rider of the 1st respondent's vehicle and directed to pay a sum of Rs.81,250/- as compensation by the 1st and 2nd respondents jointly and severally. Being not satisfied with the said award passed by the tribunal, the claimant has preferred the present appeal for enhancement of compensation.

3. The learned counsel appearing for the appellant/claimant submitted that the claimant had sustained 45% disability and to substantiate the same, he has filed Ex.P5/Discharge summary and Ex.P6/Disability Certificate, Ex.P7/X-ray and Ex.P8/Accident register extract before the tribunal. PW2/Dr.Saichandran was also examined and he deposed that by taking note of the injuries sustained by the claimant, he assessed the disability at 45%. The tribunal without considering the same, has awarded only Rs.56,250/-, which is very meagre and requires enhancement.

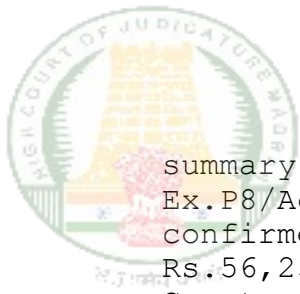
4. The learned counsel for the appellant further submitted that the tribunal has not granted reasonable compensation towards pain and suffering, transport expenses and extra nourishment without following the principles laid down by the Hon'ble Supreme Court and this Court. Hence prayed for enhancement of compensation.

5. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the tribunal upon considering the materials available on record, has fixed the income of the deceased and awarded compensation under compensation to the claimant, which is reasonable and does not require any enhancement as sought for by the appellant. Hence the appeal is liable to be dismissed.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. Before the tribunal, the appellant/claimant was examined as PW1 and also examined PW2 & PW3 on their side and marked 8 documents Ex.P1 to P8. On the side of the respondents no witnesses were examined and no documents were marked.

8. From a perusal of records, it is seen that Dr.Saichandran was examined as PW2, he assessed the disability at 45% based on the medical records viz., Ex.P5/Discharge



summary and Ex.P6/Disability Certificate, Ex.P7/X-ray and Ex.P8/Accident register extract. The tribunal has also confirmed the said disability at 45%, but awarded a sum of Rs.56,250/- as compensation for disability. The Hon'ble Supreme Court and this Court, in recent judgments has catergorically described that the a sum of Rs.2000/- to Rs.5000/- can be taken per percentage depending upon the facts of the case. In my view, in the present case on hand, the accident had occurred in the year 2008, therefore, it would be proper to fix a sum of Rs.2000/- per percentage. Since the disability was not disputed, this Court also confirms the disability at 45% as assessed by the doctor and granted a sum of Rs.90000/- towards disability.

9. In respect of compensation awarded by the tribunal under other heads, the tribunal has fixed a sum of Rs.5000/- as monthly income by considering the avocation of the claimant, this Court also confirms the said amount. But taking note of the grievous injuries sustained by the claimant on his right ankle, it can be presumed that the appellant could have not able to resume his work as Bore-well Mechanic atleast for four months. Hence, it would be proper to modify the compensation under the head 'Loss of earning power' from two months to four months. Accordingly, the compensation under the head 'Loss of earning power' is enhanced to Rs.20,000/- from 10,000/-.

10. It is seen from the award that the tribunal has not granted compensation towards Attendant charges and loss of amenity. Further it is also seen that the tribunal has granted consolidated amount of Rs.15,000/- towards Pain and Suffering, transportation and extra nourishment and the same is set aside. In veiw of the injuries and disability sustained by the claimant, this Court is inclined to grant compensation under separate heads. Thus, the compensation awarded by the tribunal is modified by this Court as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Diability	56,250/-	90,000/- (45 x 2000)
Loss of Earning	10,000/- (for 2 months)	20,000/- (For 4 months)



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Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Pain and Suffering, Transportation & Nutritious Food.	15,000/-	...
Pain and Suffering	..	15,000/-
Transportation	...	5,000/-
Extra Nourishment	...	5,000/-
Loss of Amenity	...	10,000/-
Attendant Charges	..	10,000/-
Total	81,250/-	1,55,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs. 81,250/- is awarded by the tribunal is enhanced to Rs.1,55,000/-together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. The learned counsel appearing for the 2nd respondent/insurance company has submitted that the entire compensation awarded by the tribunal was already deposited before the tribunal. In view of the said submission, the 1st and 2nd respondents are directed to deposit the enhanced amount as modified by this Court jointly and severally, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Additional District Judge (FTC-II),
Chennai

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

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.8181

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.8000

C.M.A. No.1785 of 2012

SPD(CO)
SU(28/10/2021)