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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : 26.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2027 of 2012

A.Jai Ganesh
S/o.Aravind

..Appellant/Petitioner

Vs.

1. P.Thiyagarajan
(Remained ex-parte before the Trial Court)

2. Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, Prince Towers, 5th Floor,
College Road, Nungambakkam,
Chennai - 6.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.03.2012 made in M.C.O.P.No.4814 of 2008 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.N.M.Muthurajan

For R2 : Mr.N.Somasundar
R1- Exparte

J U D G M E N T

(heard through video-conferencing)

This Civil Miscellaneous Appeal is filed, seeking for enhancement of compensation granted by the Tribunal in the award dated 01.03.2012 made in M.C.O.P.No.4814 of 2008 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.4814 of 2008 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the 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 19.10.2008.



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3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.5,30,600/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal under various heads, 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 fracture of maxilla left, fracture of zygoma left side and fracture of left clavicle. P.W.2/Doctor assessed the disability of the appellant at 55%, but the Tribunal reduced the same to 30% without giving any valid reason. The appellant was working as a Collection Boy in M/s.Axis Marketing and earning a sum of Rs.8,500/- per month. But, the Tribunal fixed at a sum of Rs.5,000/- per month as notional income of the appellant and awarded a meagre compensation. The amounts awarded by the Tribunal under different heads are very low and prayed for enhancement of compensation.

6.Per contra, Mr.N.Somasundar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal has already granted compensation leniently under different heads, particularly, loss of income at Rs.30,000/- towards partial permanent disability. The multiplier system was adopted and for proof of salary, the appellant had not examined any independent witnesses or his employer. Therefore, the Tribunal had taken Rs.5,000/- as notional income. Even though, the appellant had marked document Ex.P19 showing monthly income as Rs.8,500/- p.m., since no independent witness was examined to prove the income of the appellant, the Tribunal has rightly fixed notional income based on precedents and awarded just compensation, which does not warrant interference by this Court and therefore, the appeal has to be dismissed.

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

8.Now the point for consideration is whether the appellant is entitled for enhancement of the compensation as prayed for by him?

POINT:

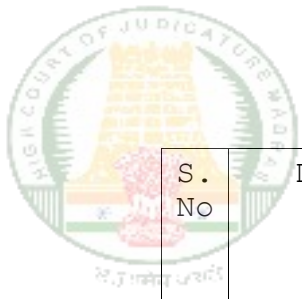
9.It is the contention of the appellant that he suffered fracture of left mandible, fracture of left clavicle, fracture



in left zygomatic region and also suffered facial and head injuries and also surgeries conducted and implants fixed for mandible and clavicle. P.W.2/Doctor has assessed the disability of the appellant at 55% while so, the Tribunal reduced the percentage of disability to 30% holding that assessment of P.W.2/Doctor is very high and the assessment is not in respect of the whole body and accordingly, awarded compensation towards 30% disability by adopting multiplier method. The 2nd respondent-Insurance Company has not produced any contra evidence to disprove the contention of P.W.2 and Ex.P23/disability certificate. Therefore, considering the nature of injuries and deposition of P.W.2/Doctor, the appellant is entitled to compensation for 45% disability.

10.As regards the monthly income of the appellant is concerned, it is the contention of the appellant that he was aged 30 years and was working as Collection Boy in M/s.Axis Marketing and was earning a sum of Rs.8,500/- per month and to that effect, Ex.P19 salary certificate, Ex.P20 bank statement and Ex.P21 identity card copy were marked on behalf of the appellant. There is no contra evidence produced on behalf of the Insurance Company in order to disprove the monthly income of the appellant. Therefore, despite the evidence available on record, it is not appropriate for the Tribunal to fix notional income at a sum of Rs.5,000/- based on precedent. In such circumstances, this Court feels it appropriate to fix the monthly income of the appellant at Rs.8,500/-. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.7,80,300/- ($8,500 \times 12 \times 17 \times 45/100$). Apart from this, due to the injuries and treatment taken, the appellant would not have attended his work atleast for a period of six months. Hence, a sum of Rs.51,000/- ($Rs.8,500/- \times 6$ months) is granted towards loss of income for six months.

11.Considering the nature of injuries and period of treatment taken by the appellant, the Tribunal has awarded a sum of Rs.5,000/-, Rs.10,000/-, Rs.15,000/- and Rs.20,000/- towards transportation, extra nourishment, future medical expenses and attendant charges which are, in the opinion of this Court, are meagre and liable to be modified. Hence, a sum of Rs.10,000/- towards transportation, Rs.25,000/- towards extra nourishment, Rs.25,000/- towards future medical expenses and Rs.25,000/- towards attendant charges are awarded by this Court. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Accordingly, the Point is answered. Now 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 or reduced
1.	Loss of income	30,000/-	51,000/-	Enhanced
2.	Transportation	5,000/-	10,000/-	Enhanced
3.	Extra nourishment	10,000/-	25,000/-	Enhanced
4.	Damage to clothing	1,000/-	1,000/-	Confirmed
5.	Medical expenses	1,03,600/-	1,03,600/-	Confirmed
6.	Future medical expenses	15,000/-	25,000/-	Enhanced
7.	Attendant Charges	20,000/-	25,000/-	Enhanced
8.	Pain & sufferings	40,000/-	40,000/-	Confirmed
9.	Loss of earning power	3,06,000/-	Rs.7,80,300/-	Enhanced
	Total	Rs.5,30,600/-	Rs.10,60,900/-	Enhanced by Rs.5,30,300/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,30,600/- is hereby enhanced to Rs.10,60,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced amount of compensation. The 2nd respondent, insurer of the motorcycle is directed to deposit the enhanced 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.4814 of 2008 on the file of Motor Accidents Claims Tribunal, Court of Small Causes-IV, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi



To

1. The Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes - IV,
Chennai.

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

+1cc to Mr.N.Somasundaar, Advocate, S.R.No.12060

+1cc to M/s.N.M.Muthurajan, Advocate, S.R.No.12113

C.M.A.No.2027 of 2012

SSD(CO)
RGA(20/09/2021)