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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2278 of 2012

Dhayalan ... Appellant/Claimant

Vs.

1. Ramachandran

2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street,
Thiruvannamalai Town and Dist.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment 23.12.2011 passed in MCOP No.85 of 2010 by the Additional Subordinate Judge, Motor Accident Claims Tribunal, Thiruvannamalai.

For Appellant : Ms. Subadra
for M/s M.Malar

For respondents : Mr.S.Krishnamoorthy (for R2)
No appearance for R1

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court to enhance the compensation.

2. The appellant/ claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 08.01.2009.

3. The brief case of the claimant is as follows: On 08.01.2009 at about 1.00 p.m, the claimant riding his two wheeler bearing registration No.TN-25-C2325 from his house towards his rice shop at Kamatchi Ammal Koil, Thiruvannamalai and while nearing Thirumanjana Gopura Veedhi opposite to the



Veterinary Hospital, Thiruvannamalai Town, a speedy Hero Honda bearing registration No. TN-32-D-5068 hit the motorcycle ridden by the claimant, thereby he sustained injuries. According to the claimant, the rash and negligent riding of the rider of the Hero Honda was the cause of accident, and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to them.

4. The second respondent/ Insurance Company resisted the claim petition by filing counter affidavit.

5. Before Tribunal, the claimant and one Dr.Raveendran were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked. On the side of the second respondent, two witnesses were examined as RW1 and RW2 and Ex.R1 to Ex.R5 were marked.

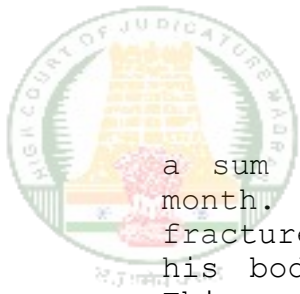
6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,41,300/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Partial permanent disability 40 x 2000	80,000
2	Loss of income for one month	3,000
3	Transportation charges	3,000
4	Extra Nourishment	3,000
5	Attender's charges	3,000
6	Medical bills	39,300
7	Pain and sufferings	10,000
	Total	1,41,300

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ claimant submitted that the claimant is doing rice business and was earning a sum of Rs.6,000/- per month, however, the Tribunal has fixed only a sum of Rs.3,000/- as monthly income and awarded



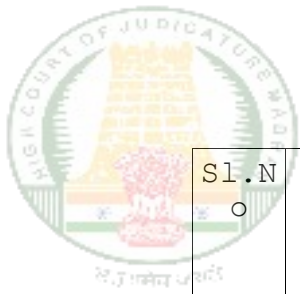
a sum of Rs.3000/- towards " Loss of income " for only one month. He further submitted that the claimant has sustained fracture on his left Tibia and also sustained injuries all over his body and has taken treatment in the Government Hospital, Thiruvannamalai and subsequently in the CMC Hospital Vellore and also in the private hospitals, but, without considering the above facts, the Tribunal has awarded a very meagre amount of Rs.10,000/- towards " Pain and sufferings" and not awarded any amount towards " Mental agony ", " Future medical bills" and " Loss of amenities". He also submitted that the compensation awarded under the other heads also very meagre and therefore, he prayed for enhancement of compensation.

9. The learned counsel appearing for the respondent/ insurance company submitted that after analysing the evidence on record and the medical reports, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the points for determination is
(i) Whether the compensation awarded by the Tribunal has to be enhanced.?

11. Point No.1:

The claimant has stated in the claim petition that he was doing rice business and was earning a sum of Rs.6,000/- per month and in view of the disablement suffered by the claimant in the accident, he is not able to do work as done earlier. However, there is no proof of income. Therefore, by considering the age of the claimant and the year of accident, monthly income of the claimant is fixed at Rs.4,000/- and awarded a sum of Rs.12,000/- towards " Loss of income during treatment period" for three months. The Tribunal has awarded a sum of Rs.3,000/- each towards " Transportation charges", " Extra Nourishment" and " Attender Charges". Considering the nature of the injuries and the fracture sustained by the claimant, the same are enhanced to Rs.5,000/- each and Rs.4,000/- respectively. Besides, the Tribunal has awarded a sum of Rs.10,000/- towards " Pain and sufferings", which is very meagre and is enhanced to Rs.15,000/-. The Tribunal has not awarded any amounts towards " Loss of Amenities" and hence, a sum of Rs.10,000/- is awarded under the above said head. In so far as the amount awarded under the heads " Medical Bills" and " Permanent disability " is concerned, this court is of the view that it does not warrant any interference by this court. Accordingly, the modified compensation awarded by this court under various are extracted hereunder.



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Sl.N o	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Partial permanent disability (40 x 2000)	80,000	80,000
2	Loss of income during the treatment period for three months	3,000	12,000 (4000x3)
3	Transportation charges	3,000	5,000
4	Extra Nourishment	3,000	5,000
5	Attender's charges	3,000	4,000
6	Medical bills	39,300	39,300
7	Pain and sufferings	10,000	15,000
	Loss of amenities	-	10,000
	Total	1,41,300	1,70,300

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from 1,41,300/- to Rs.1,70,300/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the enhanced compensation of Rs.1,70,300/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst



To

The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.

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+1cc to M/s.M.Malar, Advocate Sr No.10024

CMA. No.2278 of 2012

GP (CO)

PR (28/09/2021)