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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.199 of 2021

S.K.Ashok Babu

.. Appellant / Claimant

Vs.

1.T.Saravana Kumar

2.United India Insurance Co. Ltd.

Third Party Claims Office

Silingi Buildings

IV floor, No.134

Greens Road, Chennai-600 006.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2019 made in M.C.O.P.No.1511 of 2017 on the file of Motor Accident Claims Tribunal, II Special Sub Court, Small Causes Court, Chennai.

For Appellant : Ms.P.T.Saleem Fathima

For R2 : Mr.J.Chandran

#### J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.12.2019 made in M.C.O.P.No.1511 of 2017 on the file of Motor Accident Claims Tribunal, II Special Sub Court, Small Causes Court, Chennai.



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2.The appellant is claimant in M.C.O.P.No.1511 of 2017 on the file of Motor Accident Claims Tribunal, II Special Sub Court, Small Causes Court, 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 20.01.2017.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No. TN-13-E-7454 belonging to the 1<sup>st</sup> respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,14,000/- as compensation to the appellant.

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 suffered fracture of right wrist. The Medical Board after examining the appellant certified that the appellant suffered 4% disability and issued Ex.C1/disability certificate. The appellant was working as a Technician in Bharat Electronic Limited and was earning a sum of Rs.35,000/- per month. Due to the injuries, the day-to-day activities of the appellant is affected and could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method to award compensation. As per Ex.P7, the Hospital estimated a sum of Rs.1,00,000/- towards future medical expenses. The Tribunal awarded only a meagre sum of Rs.20,000/- towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning power and therefore, the Tribunal rightly awarded compensation by adopting percentage method. The Tribunal after considering the materials available on record, has awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of



compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company and perused the entire materials on record.

8. It is the case of the appellant that in the accident, he suffered fracture on his right wrist and multiple injuries all over the body. The Medical Board after examining the appellant certified that the appellant suffered 4% disability and issued Ex.C1/disability certificate. The Tribunal fixed the disability of the appellant at 4% as per Ex.C1/disability certificate and awarded a sum of Rs.12,000/- towards disability by awarding a sum of Rs.3,000/- per percentage of disability. The appellant has not produced any document to prove that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation by adopting multiplier method. The accident is of the year 2017 and the amount awarded by the Tribunal per percentage of disability is meagre. 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 rise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.20,000/- (Rs.5,000/- X 4%).

8(i). According to the appellant, he has taken treatment as in-patient in SRMC Hospital, Porur, from 20.01.2017 to 25.01.2017 and underwent surgery. The amounts awarded by the Tribunal towards transportation, attendant charges, damage to clothes and loss of amenities are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, attendant charges, damage to clothes and loss of amenities are hereby enhanced to Rs.5,000/-, Rs.10,000/-, Rs.3,000/- and Rs.10,000/- respectively. The appellant has filed Ex.P7, estimation given by the hospital to the tune of Rs.1,00,000/- towards future medical expenses. The appellant has not examined the author of the document to prove the same. In such circumstances, the Tribunal considering Ex.P6/x-ray awarded



a sum of Rs.20,000/- towards future medical expenses and the same is proper. The amounts awarded by the Tribunal under all other heads 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 or reduced |
|------|--------------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1.   | Permanent disability           | 12,000                          | 20,000                            | Enhanced                                          |
| 2.   | Pain and suffering             | 10,000                          | 10,000                            | Confirmed                                         |
| 3.   | Transportation                 | 3,000                           | 5,000                             | Enhanced                                          |
| 4.   | Extra nourishment              | 10,000                          | 10,000                            | Confirmed                                         |
| 5.   | Damage to clothes and articles | 1,000                           | 3,000                             | Enhanced                                          |
| 6.   | Attendant charges              | 3,000                           | 10,000                            | Enhanced                                          |
| 7.   | Loss of income                 | 50,000                          | 50,000                            | Confirmed                                         |
| 8.   | Loss of amenities              | 5,000                           | 10,000                            | Enhanced                                          |
| 9    | Future medical expenses        | 20,000                          | 20,000                            | Confirmed                                         |
|      | Total                          | 1,14,000                        | 1,38,000                          | Enhanced by Rs.24,000/-                           |

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,14,000/- is hereby enhanced to Rs.1,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> 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. 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. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal  
The II Special Subordinate Judge  
Small Causes Court, Chennai.

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

+1cc to M/s.P.T.Saleem fathima, Advocate, S.R.No.6605

+1cc to M/s.J.Chandran, Advocate, S.R.No.6437

C.M.A.No.199 of 2021

RSV(CO)  
SB(15/09/2021)