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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2645 of 2015

Chellappan ... Appellant/Petitioner

Vs.

1.Mani

2.Divisional Manager,

The New India Assurance Company Limited,

No.106, Big Street,

Tiruvannamalai.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.559 of 2006, on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai, dated 03.01.2013.

For Appellant : Mr.F.Terry Chellaraja

For R1 : Ex-parte

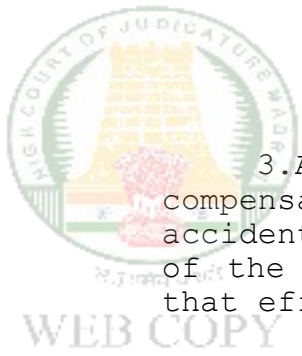
For R2 : Mr.R.Neethi Perumal

JUDGMENT

(This case has been heard through video conference)

The claim petitioner is the appellant herein.

2.The claimant/appellant herein has filed a claim petition in MCOP.No.559 of 2006, on the file of the Motor Accidents Claims Tribunal, learned Principal Subordinate Judge, Thiruvannamalai, claiming compensation for the injuries sustained in the road transport accident took place on 27.07.2005 and the Tribunal has awarded a sum of Rs.1,77,500/- as compensation. Aggrieved against the same, this Civil Miscellaneous Appeal has been filed on the point of quantum to enhance the compensation amount.



3.As this appeal filed only against the quantum of the compensation, the factum of the accident, the manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle are not under dispute and finding to that effect by the Tribunal is hereby confirmed.

4.Mr.Terry Chelaraja, learned counsel for the claim petitioner/appellant herein would contend that the compensation amount as awarded by the Tribunal is very meagre and low and the reasons assigned for rejection of the medical bills viz., Exs.P7 & P9 are unjust and the disability ascertained is also considered as very low as compared to the opinion given by PW3/Dr.Ravindran and that other heads also needs enhancement.

5.The learned counsel for the claim petitioner/appellant herein would contend that Ex.P7/medical bill to the tune of Rs.18,915 & Ex.P9/medical bill to the tune of Rs.12,486/- were associated with the third surgery, that has been conducted to remove the fixtures. However, after the accident, before trial, by over sight, discharge summary was not filed before the lower Court, but, the medical bills were marked as Exs.P7 & P9. In view of the accident, the claim petitioner has lost his earning capacity and hence, multiplier method will be adopted.

6.Heard both the learned counsels and perused the materials placed on record.

7.After hearing the rival submissions on the point of quantum, it is seen from Ex.P12/ disability certificate issued by PW2/Dr.Ravindaran that the claim petitioner had sustained left leg fracture and there was malunion and due to the same, he unable to walk without assistance and accordingly, PW2/Doctor has fixed the disability at 35%. The learned Principal Sub Judge, Tiruvannamalai, has accepted in entirety and accordingly fixed the disability at 35%.

8.In the absence of any other positive evidence to show that the claim petitioner/appellant herein had sustained more percentage of disability than Ex.P12/disability certificate, this Court has no other option but to reject the contention of the claim petitioner. Taking into consideration the date of the accident, the Tribunal has rightly awarded a sum of Rs.2,000/- per one percentage disability and awarded a sum of Rs.70,000/- (35% x 2,000) under the head of disability and the same is appears to be just and reasonable.

9.Though, the plea has been raised that due to the injuries sustained in the accident, the claim petitioner had suffered



earning disability, this Court has given its anxious consideration for the said contention and could not uphold the same for more than one reason.

10. On a perusal of the evidence of PW2/Doctor coupled with the evidence of Ex.P12/disability certificate, this Court finds that there is permanent disability, however, it does not affect the earning capacity of the claim petitioner. Except oral assertion of the claim petitioner no other positive legal evidence is available on record in support of the said contention. Accordingly, the plea raised by the claim petitioner/appellant herein that due to the accident, he had suffered permanent disability which affects earning capacity is hereby stands rejected.

11. Considering the fact that the claim petitioner/appellant herein has taken treatment as in-patient for 38 days and also taking note of the fact that between the period of discharge after the second surgery and before the Trial, he had taken treatment and accordingly the documentary evidences viz., Exs.P7 & P9 were filed before the Tribunal, are ought to have been accepted.

12. Hence, on the above view of the matter, as per Ex.P7, a sum of Rs.18,915/- round of to Rs.18,900/-, as per Ex.P9 a sum of Rs.12,486/- round of to Rs.12,500/-, as per Ex.P6, a sum of Rs.35,500/- and as per Ex.P8, a sum of Rs.23,000/-, totaling to Rs.89,900/- is awarded under the head of medical expenses.

13. Taking into consideration the nature of the injury and the period of treatment, the loss of earning during the period of treatment is fixed at Rs.6,000/- per month and the same is calculated as Rs.6,000/- x 6 = Rs.36,000/- and the compensation under the various heads are enhanced and re-assessed as under:

S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Disability	70,000/-	70,000/-
2	Pain and suffering	25,000/-	25,000/-
3	transportation	10,000/-	10,000/-
4	Nutrition and extra nourishment	5,000/-	10,000/-
5	Attendant Charges	---	25,000/-
6	Loss of amenities	---	15,000/-



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S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
8	Loss of income during the period of treatment	9,000/- (3,000 x 3)	36,000/- (for a period of six months)
8	Medical expenses	58,500/-	89,900/-
	Total	1,77,500/-	2,80,900/-

Hence, compensation awarded by the Tribunal is enhanced from Rs.1,77,500/- to Rs.2,80,900/- (Rupees Two Lakhs Eighty Thousand and Nine Hundred Only).

14. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above.

(b) The Insurance Company/second respondent herein is directed to deposit the enhanced compensation amount as awarded by this court to the credit of MACTOP.No.559 of 2006, on the file of the Motor Accident Claims Tribunal, the learned Principal Sub Judge, Tiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c) The enhanced award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the appellant herein/claim petitioner is permitted to withdraw the enhanced award amount less the amount already withdrawn, if any.

(e) The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(f) No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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The Motor Accident Claims Tribunal,
The Principal Sub Judge,
Tiruvannamalai.

Copy to

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

+1cc to Mrs.M.Malar, Advocate Sr.25428
+1cc to Mr.R.Neethiperumal, Advocate Sr.25541

C.M.A.No.2645 of 2015

kv[co]
srg 29/10/2021