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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.2896 OF 2012

G.Vadivelu

... Appellant/Petitioner

.Vs.

1. Indev Trans,
No.17, IV North Beach Road,
Off. Krishnan Koil Street, Chennai-1.
2. National Insurance Co. Ltd.,
No.751, Anna Salai, Chennai-2. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 11.10.2007 passed by the III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai in MCOP No.5283 of 2001.

For Appellant	: Mr.N.S.Sivakumar
For I respondent	: Mr.P.Muralidharan
For II respondent	: Ms.N.B.Surekha

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/ claimants has filed a claim petition before the Tribunal seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 18.03.2001.

3. The brief case of the claimant is as follows: On 18.03.2001, at about 2.00 p.m, while the claimant was pushing his motorcycle at Ennore Express Road near Palagai Thotti, a trailer lorry bearing registration No.TN-04-C-7887, hit the claimant thereby he sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of



the Tractor Lorry 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, on the side of the claimant, the claimant and Dr.J.R.R.Thiagarajan were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.89450/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of earning (2000x12)	12,000
2	Transportation charges	2,000
3	Extra Nourishment	2,000
4	Damages to clothes and motorcycle	2,000
5	Medical bills	450
6	Pain and sufferings	20,000
7	permanent disability (50x1000)	50,000
8	Other expenses	1,000
	Total	89,450

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 a fisherman and at the time of accident, he was aged 19 years and was earning a sum of Rs.2,000/- per month and due to the accident, he is not able to do his work as done earlier. He further submitted that the Doctor, who has given disability Certificate Ex.P8 was examined as PW2 and he assessed the disability suffered by the claimant as 70%, however, the Tribunal on its own, has fixed at 50%, without any reason and awarded a sum of Rs.50,000/- towards permanent disability. He also submitted that the compensation



awarded under the other heads also very meagre and no compensation was awarded towards " Attender Charges and Loss of amenities" and therefore, he prayed for enhancement of compensation.

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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 of Rs.89,450/- 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:

A perusal of the Ex.P8 shows that it was a disability certificate issued by Dr.J.R.R.Thiagarajan, in which he assessed the disability suffered by the claimant as 70%. He was also examined as PW2 and deposed that he examined the claimant and assessed the disability of the claimant and given the disability certificate Ex.P8. But without any contradictory evidence or any other materials, the Tribunal on its own has assessed the disability as 50%. The Tribunal is not an expert to assess the disability. If such evidence with regard to the disability assessed by the doctor is disbelieved, the Tribunal ought to have referred the claimant to the Medical Board for assessing the disability suffered by the claimant. Therefore, in the absence of any other materials to disprove the disability certificate Ex.P8, the assessment made by the Tribunal by assessing the disability suffered by the claimant as 50% is unfair. Accordingly, considering the evidence of PW2, this court fixed the disability of the claimant as 70% and awarded a sum of Rs.1,000/- per percentage. In so far as the other heads are concerned, the contention of the appellant is that the Tribunal has awarded very meagre amounts and not awarded any amounts towards " Attenders Charges and Loss of Amenities". By considering the above submissions and also by considering the facts and circumstances of the case and the nature of injuries sustained by the claimant, this court is inclined to modify the award passed by the Tribunal and the modified compensation awarded under various are extracted hereunder.



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

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1 The III Judge, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai

Copy To

The Section Officer,
V.R.Section
High Court, Madras-104.

+1cc to Ms.N.B.Surekha, Advocate, S.R.No.9293

+1cc to Mr.M.R.Dharanichandar, Advocate, S.R.No.9386

CMA. No.2896 of 2012

SSD(CO)
PM/10/11/2021