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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 09.12.2020

JUDGMENT DELIVERED ON : 12.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.2966 OF 2012

P.Balu
S/o. Perumal

... Appellant/Petitioner

Vs.

1. M/s. Ragavendra Travels
No.10, 4th Main Road.
United India Colony,
Chennai - 600 024.

2. The Branch Manager,
New India Assurance Company Ltd.,
Macmillan House,
Second Floor, 21, Pattullos Road,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.794 of 2005 dated 26.06.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant	:	Mr.Mugund R.Pandian
For Respondents	:	Mr.K.Vinod for R1
		No Appearance for R2.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 26.06.2008 passed in MCOP.No.794 of 2005 by the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri.

2. The case in brief are as follows:

On 18.10.2004 at about 10.00 a.m., while the petitioner



was walking along with his two wheeler near by thonnaiyan kuttai, at that time, the first respondent's vehicle bearing Registration No. TN 01 AH 6685 driven in a rash and negligent manner, dashed against the petitioner, as a result of which, he sustained grievous injuries. Immediately, the petitioner was taken to Government Hospital, Krishnagiri and thereafter he was taken to Saint John Hospital, Bengaluru for further treatment. The first respondent remained exparte before the Tribunal.

3.The learned counsel for the appellant has submitted his arguments. As per his submissions, the claimant before the Motor Accident Claims Tribunal (Additional District Judge), Krishnagiri is the appellant herein. He further submitted that no evidence was recorded on the side of respondent. It is the contention of the learned counsel for the appellant that the Motor Accidents Claims Tribunal failed to assess the disability in its proper perspective as per the reported ruling of the Hon'ble Supreme Court and Hon'ble High Court. Therefore, the compensation awarded is not just compensation. Aggrieved by the same, the claimant before the Tribunal had preferred this appeal seeking enhancement of the compensation.

4. It is stated in the claim petition that the petitioner was working as a Mosaic and Granite Polishing Mason at Devaraj Granites and he was drawing Rs.200/- per day. The Tribunal ignored those facts on the ground that no documents had been furnished and had roughly estimated the income as Rs.200/- per day for 20 days and assessed the income as Rs.4000 per month, which is a meagre amount.

5. As per the guideline issued by the Hon'ble Supreme Court wherever the proof of income is not available, the Motor Accidents Claims Tribunal can invoke the principles of daily wages involved in MNREGS wherein a labourer's income is fixed as Rs.190 per day. This has to be rounded off to Rs.200/- per day and for the entire month to be calculated as Rs.6000/-. The Motor Accidents Claims Tribunal had not assessed the partial permanent disability on the basis of the multiplier system, but had calculated using percentage method for 45% disability and has awarded Rs.19000/-. Under non pecuniary heads, the award was meagre. The non pecuniary heads like Pain and Sufferings, Attendant Charges, Transport, Extra Nourishment, Future Medical Expenses were not assessed. Therefore, the claimant has preferred this Appeal.

6. The learned counsel for the second respondent has submitted that the Motor Accidents Claims Tribunal had properly appreciated the facts, evidence and assessed the compensation as per the reported ruling of the Hon'ble Supreme Court and Hon'ble High Court. He further submitted that the appellant has



violated the traffic rules. He further submitted that the appellant sustained fracture in the left leg and he took treatment from 18.10.2004 to 03.11.2004 and he has only 40% partial permanent disability. There is no material for interference by this Court.

7. Points for consideration

Whether the appellant/claimant is entitled to enhancement of compensation.

8. On perusal of the claim petition in MCOP.No.794/2005, the counter filed by the second respondent/Insurance Company and the order/judgment passed by the Motor Accident Claims Tribunal in MCOP.No.794/2005 and the memorandum of grounds of appeal, it is found that the date of accident was on 18.10.2004. On the date of the accident, the petitioner was aged 25 years and at that age, he suffered fractures in the left thigh and head and he had undergone treatment in the best hospital i.e., Saint Johns Hospital. At that young age, a person would be youthful, energetic and regain normal health. Therefore, the claim of partial permanent disability is not acceptable. The petition was filed in the year 2005 and the same was taken up for enquiry in the year 2008. Any how, the Motor Accident Claims Tribunal had assessed 45% and awarded 2% for each percentage. If the permanent disability is to be calculated based on the multiplier system i.e., $6000 \times 1/2 = 3000 \times 12 = 36000 \times 45/100 \times 18 = 2,91,600/-$. Therefore, this Court awards a sum of Rs.291600/- towards permanent disability.

9. Considering the period of treatment and the nature of injuries sustained by the appellant, the Tribunal awarded a sum of Rs.5,000/- and Rs.2000/- towards Pain and Sufferings and Transportation respectively is meagre. Therefore, this Court enhances the same to Rs.30,000/- and 20,000/- towards Pain and Sufferings and Transportation respectively and this Court awards a sum of Rs.20000/- towards extra nourishment and Rs.20000/- towards future medical expenses.

10. Considering the treatment taken by the appellant in the Saint Johns Hospital, Bengaluru, the medical expenses will roughly come to Rs.20000/- and a sum of Rs.18000/- is awarded towards loss of income during the period of treatment.

11. The Tribunal awarded a sum of Rs.1000/- towards attendant charges and it is reasonable and the same is hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:



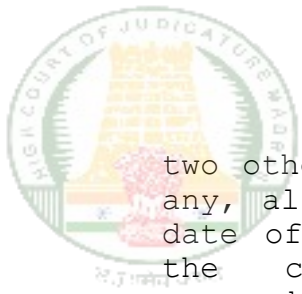
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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Permanent Disability	90,000	2,91,600
2	Medical Expenses	29,775	20,000
3	Pain and Sufferings	5,000	30,000
4	Transportation	2,000	20,000
5	Attendant Charges	1,000	1,000
6	Loss of income during the period of treatment	-	18000
7	Extra Nourishment	-	20000
8	Future Medical Expenses	-	20000
	Total	1,27,775	4,20,600

12. As per the claim of the petitioner, he was walking on the left side of the road towards thonnaiyan kuttai in his two wheeler Bajaj M 80, at the time he was attending repair works on his two wheeler, the two wheeler was punctured on the road. Whiles, the respondent's vehicle bearing Registration No. TN 01 AH 6685 rode the same in a rash and negligent manner from behind and knocked on the appellant/claimant. A person riding the two wheeler will be ride in the service road and not in the National High Ways. But the two wheeler suffered punctured, therefore, no other option to move towards the road side, from the National High Ways. Therefore, the contributing negligence cannot be attributed on the appellant/claimant side. Therefore, the deduction towards contributed negligence of the claimant by the Tribunal is found unreasonable and unanswerable.

13. The Points for consideration is answered in favour of the appellant/claimant and against the respondent/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is allowed. The compensation award granted by the Tribunal of Rs.1,27,775 is enhanced to Rs.4,20,600/-. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.794 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Krishnagiri, with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit along with costs if any as awarded by the Tribunal, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and



two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri

Copy To

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

+1 cc to M/s.Mukund R Pandiyan, Advocate Sr.No.8148

C.M.A.No.2966 of 2012

BR(CO)

PM(07/09/2021)