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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.841 of 2021

C.Murugesan

... Appellant

Vs.

1.S.Hariharan

2.Royal Sundaram Alliance Insurance Company Limited,
Subramaniya Building, No.1, Club House Road,
Anna Salai,
Chennai - 600 002.

3.P.Rajkumar

4.Cholamandalam MS General Insurance Company Limited,
O.No.154, N.No.319, Thambu Chetti Street,
Chennai - 600 001.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.08.2020 made in M.C.O.P.No.942 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.A.A.Venkatesan

For R2 : Mr.G.Vasudevan

For R4 : Mr.M.B.Raghavan



J U D G M E N T

ம.ஜ.1000 (The matter is heard through "Video Conferencing/Hybrid mode".)

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(Judgment of the Court was delivered by S.KANNAMMAL, J)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 18.08.2020 made in M.C.O.P.No.942 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.942 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.1,16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.12.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to 1st respondent and directed the 2nd respondent-Royal Sundaram Alliance Insurance Company Limited to pay a sum of Rs.33,70,400/- 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 sustained spinal cord injury, fracture of posterior neural arch of D12 and fracture of left Transverse process of L-1 on the spinal cord, fracture of left ribs and compression of spinal canal and multiple injuries all over the body. The Doctors from K.K.Nagar Hospital, Chennai examined the appellant and certified that the appellant suffered 75% locomotor disability and issued Ex.P15/disability certificate & Ex.P16/disability note to that effect. The Tribunal ought to have awarded compensation for 100% disability instead of granting compensation for 75% disability. At the time of accident, the appellant was aged 32 years, working as Control Room Executive at SRM Transports India (P) Limited, West Mambalam, Chennai and was earning a sum of Rs.25,000/- per month. To prove the avocation and income, the appellant marked his Employee ID card as Ex.P12, Bank statement series as Ex.P13 and examined the Deputy General



Manager, SRM Transports as P.W.2. But, the Tribunal has taken the net salary of the appellant i.e., Rs.16,745/- per month as his notional income and awarded compensation towards disability and the same is meagre. The Tribunal ought to have taken the gross salary of the appellant as his monthly income and awarded compensation towards disability. The appellant has lost his entire earning capacity and he is not in a position to do any work as he was doing earlier and hence, the Tribunal ought to have granted 50% enhancement towards future prospects. The amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are meagre. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Royal Sundaram Alliance Insurance Company Limited contended that the Tribunal accepted the disability certificate issued by the K.K.Nagar Hospital, Chennai and awarded a sum of Rs.24,11,280/- for 75% disability by adopting multiplier method and the same is not meagre. The appellant has not produced any documents like salary certificate or wage register to prove his income. In the absence of any material evidence with regard to income, a sum of Rs.16,745/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant failed to produce any materials to substantiate that he requires future medical treatment. Hence, he is not entitled for compensation towards future medical expenses. The Tribunal considering the entire materials on record, has awarded a sum of Rs.33,70,400/- as compensation to the appellant which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 4th respondent-Cholamandalam MS General Insurance Company Limited made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Royal Sundaram Alliance Insurance Company Limited and the learned counsel appearing for the 4th respondent-Cholamandalam MS General Insurance Company Limited and perused the entire materials on record.



9. From the materials available on record, it is seen that in the accident the appellant sustained spinal cord injury, fracture of posterior neural arch of D12 and fracture of left Transverse process of L-1 on the spinal cord, fracture of left ribs and compression of spinal canal and multiple injuries all over the body. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and the Doctors from K.K.Nagar Hospital, Chennai examined the appellant and certified that the appellant suffered 75% locomotor disability and issued Ex.P15/disability certificate & Ex.P16/disability note to that effect. The Tribunal considering the nature of injuries and Exs.P15 and P16, adopted multiplier method for awarding compensation for disability and the same is proper. At the time of accident, the appellant was aged 32 years, working as Control Room Executive at SRM Transports India (P) Limited, West Mambalam, Chennai and was earning a sum of Rs.25,000/- per month. To prove the avocation and income, the appellant marked his Employee ID card as Ex.P12, Bank statement series as Ex.P13 and also examined one N.Rathinavel, Deputy General Manager, SRM Transports as P.W.2. P.W.2 in chief examination has stated that the appellant was getting a sum of Rs.19,000/- per month as salary. But, the Tribunal has taken the net salary of the appellant i.e., Rs.16,745/- per month as his notional income and awarded compensation towards disability. The Tribunal ought to have taken the gross salary of the appellant and awarded compensation. The appellant was aged 32 years at the time of accident and the Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], rightly applied multiplier '16'. Considering the nature of injuries, disability, rise in cost of living and the nature of work done by the appellant, he is entitled to 30% enhancement towards future prospects. Thus, by fixing a sum of Rs.19,000/- per month as notional income of the appellant and granting 30% enhancement towards future prospects, the amount awarded by the Tribunal towards disability is enhanced to Rs.35,56,800/- {Rs.24,700/- [Rs.19,000/- + Rs.5,700/- (30% of Rs.19,000)] X 12 X 16 X 75/100}. In view of 30% enhancement granted by this Court towards future prospects, a sum of Rs.5,00,000/- awarded by the Tribunal towards future prospects is liable to be set aside and it is hereby set aside.

10. From the award passed by the Tribunal, it is seen that the appellant has initially taken first aid treatment at Government Head Quarters Hospital, Dindigul and then he was admitted as inpatient in SRM Hospital for one day on 23.12.2016



and thereafter he was admitted as inpatient at SIMS Hospital for eight days from 24.12.2016 to 31.12.2016 and underwent surgery. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and attendant charges are meagre and hence, the same are enhanced to Rs.75,000/-, Rs.20,000/-, Rs.30,000/- and Rs.35,000/- respectively. The Tribunal has not awarded any amount towards damages to clothes. Therefore, the appellant is entitled to a sum of Rs.1,000/- towards damages to clothes. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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
1.	Disability	24,11,280/-	35,56,800/-	Enhanced
2.	Pain and sufferings	50,000/-	75,000/-	Enhanced
3.	Transportation	5,000/-	20,000/-	Enhanced
4.	Medical expenses	3,81,781/-	3,81,781/-	Confirmed
5.	Extra nourishment	20,000/-	30,000/-	Enhanced
6.	Attendant charges	2,250/-	35,000/-	Enhanced
7.	Loss of future prospects	5,00,000/-	-	Set aside
8.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.33,70,311/- Rounded off to Rs.33,70,400/-	Rs.40,99,581/- Rounded off to Rs.41,00,000/-	Enhanced by Rs.7,29,600/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.33,70,400/- is hereby enhanced to Rs.41,00,000/- together with interest at the rate of 7.5% per annum from the date of petition



till the date of deposit. The 2nd respondent-Royal Sundaram Alliance Insurance Company Limited 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, to the credit of M.C.O.P.No.942 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. 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 by making necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to Mr.A.A.Venkatesan, Advocate Sr.28214

C.M.A.No.841 of 2021

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srg 11/01/2022