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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.522 of 2020

K.Venkatesan

.. Appellant/ Petitioner

Vs.

1.Sankar

2.The Branch Manager

The New India Assurance Company Limited

Door No.39C, Bye-pass road

Dharmapuri Town

Dharmapuri Taluk and District.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2019 made in M.C.O.P.No.45 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For R2 : Mr.J.Chandran

JUDGMENT

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 27.09.2019 made in M.C.O.P.No.45 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2.The appellant is claimant in M.C.O.P.No.45 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri. He filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.11.2017.

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 Yamaha motorcycle



belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Yamaha motorcycle to pay a sum of Rs.22,25,900/- as compensation to the appellant.

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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 left leg above knee of the appellant was amputated. The Medical Board after examining the appellant certified that the appellant suffered 85% disability. At the time of accident, the appellant was working as a mason and sub-contractor, earning a sum of Rs.30,000/- per month. The Tribunal without considering the same, fixed a meagre sum of Rs.9,000/- per month as notional income of the appellant. The Tribunal has not awarded any enhancement towards future prospects and any compensation 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 2nd respondent/Insurance Company contended that the appellant failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant, which is excessive. The Tribunal has awarded excessive amount of Rs.2,00,000/- towards loss of amenities. The total compensation awarded by the Tribunal is not meagre. The appellant is not entitled for any 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 2nd respondent/Insurance Company and perused the entire materials on record.

8. It is the case of the appellant that in the accident, he sustained grievous injuries all over the body and his left leg below knee was amputated. At the time of accident, the appellant was a mason by profession, he was doing construction work and was earning a sum of Rs.30,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant. The accident is of the year 2017 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- per month including future prospects is fixed as notional income of the appellant. The Tribunal



accepting the disability certificate issued by the Medical Board, fixed the disability of the appellant at 85%, applied multiplier 15 and awarded compensation towards disability by adopting multiplier method, which is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.18,36,000/- (Rs.12,000/- X 12 X 15 X 85/100). The appellant has not produced any document to prove that he is still taking treatment and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all other heads are not meagre 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.	Physical disability	13,77,000	18,36,000	Enhanced
2.	Pain and suffering	75,000	75,000	Confirmed
3.	Extra nourishment	30,000	30,000	Confirmed
4.	Attendant charges	15,000	15,000	Confirmed
5.	Transportation	20,000	20,000	Confirmed
6.	Loss of amenities	2,00,000	2,00,000	Confirmed
7.	Medical expenses	5,02,000	5,02,000	Confirmed
8.	Repairing charges to two wheeler	6,900	6,900	Confirmed
	Total	22,25,900	26,84,900	Enhanced by Rs.4,59,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,25,900/- is hereby enhanced to Rs.26,84,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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/-

Deputy Registrar

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Sub Assistant Registrar

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To

1.The Special District Judge
Motor Accident Claims Tribunal
Dharmapuri.

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

+1cc to Mr.M.Selvam, Advocate, S.R.No.4767

+1cc to Mr.J.Chandran, Advocate, S.R.No.4425

C.M.A.No.522 of 2020

BP(CO)
SB(24/11/2021)