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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.741 OF 2012

M.Saravanan

...Appellant / Petitioner

Vs.

1.M.Jitendra

2.M/s.New India Assurance
Co. Limited

No.45, V Floor

Moore Street, Chennai-600 001.

...Respondents / Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment and decree dated 18.07.2011 passed in M.C.O.P.No.2239 of 2007 by the III Judge, Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. T.G.Balachandran

For Respondents : Mr.J.Michael Visuvasam for R2

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 for enhancement of compensation.

2. The appellant/claimant 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 30.03.2007.

3. The brief case of the claimant is as follows: On 30.03.2007, at about 2.45 p.m, when the claimant was proceeding as cleaner in Tipper Lorry No.TN-20-AX-7799 at Thiruvannamalai 200 Feet Bye-pass Road from Padi near Srinivasapuram, due to rash and negligent driving of the driver of the lorry, it collided with another Lorry standing on the road side due to brake down and thereby, the claimant sustained grievous injuries. According to the claimant, the rash and negligent



riding of the first respondent was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

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4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr.K.J.Marhiazhagan, were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P4 were marked. On the side of the second respondent, no oral and documentary evidence was adduced. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,29,000/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of Income for 3 months	13,500
2	Transportation	5,000
3	Extra Nourishment	5,000
4	Damage to clothes	500
5	Medical Expenses	5,000
6	Pain and suffering	20,000
7	Disability of 40% at the rate of Rs.2000/- per disability	80,000
	Total	1,29,000

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

8. Heard the learned counsel for the appellant and the learned counsel for the second respondent/insurance company and perused the materials on record.

9. The learned counsel appearing for the appellant/ claimant submitted that the claimant had suffered fracture of shaft of right femur, fracture of right Condyle and also sustained multiple injuries and the doctor has assessed the disability suffered by the claimant as 50%, But the Tribunal did not accept the said assessment of the doctor and on its own, the Tribunal has fixed the disability at 40%, which is unsustainable. The Tribunal has fixed Rs.2000/- per percentage of the disability which is very low and therefore, considering



the nature of disability the percentage has to be increased. Taking note of the fact that at the time of the accident, the claimant was aged 20 years, reasonable amount has to be enhanced for the serious injuries sustained by him in the accident. He further submitted that no amount was awarded towards conventional damages and the compensation awarded under the other heads also very meagre and hence, he prayed to enhance the compensation.

10. The learned counsel appearing for the second respondent/ insurance company submitted after analysing the evidence and the documents on record, the Tribunal has rightly fixed the disability suffered by the claimant at 40% and also, the Tribunal has rightly awarded the compensation amount and hence, no further enhancement of compensation has to be awarded in this appeal. Further, he submitted that the accident was occurred in the year 2007 and no evidence has been adduced by the appellant to prove that due to the said disability, he would be prevented to do any other job in future. Therefore, in the absence of such materials before the Tribunal or before this Court, the Tribunal has rightly rejected the claim for adopting the multiplier method and rightly awarded the percentage of disability. Therefore, he seeks for dismissal of the appeal.

11. Now the point for consideration is Whether the compensation awarded by the Tribunal has to be enhanced.

12. Point

According to the appellant/claimant, he was a cleaner in a lorry and earned Rs.250/- per day. At the time of the accident, he was aged 20 years and his future avocation would be prevented due to fracture on the supra condylar right femur. Therefore, multiplier method could have been adopted by the Tribunal. But, there is no evidence or discussion by the Tribunal for considering the multiplier method. On the side of the appellant, no evidence was placed before this Court to prove that due to the said fracture, the claimant is permanently disabled to get a job in future. In the case of Raj Kumar Vs. Ajay Kumar and another reported in 2011(1) SCC 343 it has been held as follows:

"13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the



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percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanently disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

Therefore, the appellant/claimant has not satisfied this Court to prove the case that due to his permanent disability, his future earning capacity would be prevented, but claiming multiplier method without placing any evidence or materials before this Court cannot be accepted. Thus, the said contention of the appellant is liable to be rejected. In view of the above said rejection for adopting multiplier, the learned counsel for the appellant has fairly submitted that this Court can consider for enhancing the compensation amount to the appellant by awarding disability at 50% as assessed by the doctor. There is some force in the contention of the appellant. Considering the said aspect and also taking note of the age of the claimant, the Tribunal awarded Rs.2,000/- per percentage for the disability. As per the decision of the Division Bench of this Court, depends upon the facts of the case, percentage shall be enhanced from Rs.3000/- to Rs.5000/-. Thus, it is appropriate for this Court to fix Rs.3,000/- per percentage for the disability suffered by the claimant.

13. The next contention of the appellant is that awarding compensation amount under other heads are very meagre and seeks for enhancement under other heads. The learned counsel for the second respondent insurance company even though submitted that the Tribunal has rightly awarded the compensation under other heads, if this Court is satisfied, any reasonable compensation amount can be awarded. On considering the submissions made by both sides, this Court is of the view that the appellant/claimant is entitled for just a compensation.

14. PW2 - Doctor, Mathizhagan, who examined the claimant has issued disability certificate, viz., Ex.P3 by assessing his disability at 50%. Based on the assessment made by the doctor and the medical reports, the Tribunal has fixed 40% disability



to the claimant. To reject the assessment of the doctor, no material has been placed by the insurance company and this Court is of the view that the assessment of the doctor has to be accepted and based on the evidence of PW2, the claimant has suffered 50% disability due to the accident. But, the Tribunal has fixed Rs.2000/- per percentage for the disability suffered by the claimant which is very low. Therefore, it is appropriate for this Court to enhance Rs.3000/- per percentage for the disability suffered by the claimant and accordingly, the claimant is entitled to a sum of Rs.1,50,000/- (3000 x 50) under the head of "Permanent Disability". Further, no amount was awarded by the Tribunal towards "Attender Charges" and "Loss of amenities". Accordingly, a sum of Rs.15,000/- each is awarded under the above said heads. As far as the compensation awarded under the head "Loss of income" during the treatment period of 3 months is concerned, Rs.15,000/- is enhanced from Rs.13,500/- and Rs.10,000/- is enhanced from Rs.5,000/- towards "Extra Nourishment" and also Rs.40,000/- is enhanced from Rs.20,000 towards "Pain and Suffering. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Permanent disability	80,000	1,50,000 (3000 x 50)
2	Loss of income for three months	13,500	15,000
2	Transportation	5,000	5,000
3	Extra Nourishment	5,000	10,000
4	Damage to clothes	500	500
5	Medical Expenses	5,000	5000
6	Pain and suffering	20,000	40,000
7	Attender Charges	--	15000
6	Loss of amenities	-	15,000
	Total	1,29,000	2,55,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,29,000/- to Rs.2,55,000/-. No costs.

(ii) The second respondent/insurance company is



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directed to deposit the revised compensation of Rs.2,55,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

The Motor Accident claims Tribunal,
The III Judge,
Court of Small Causes
Chennai.

Copy To

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

+1cc to Mr.T.G.Balachandran, Advocate SR.No.19582

+1cc to Mr.J.Michael Viswasam, Advocate SR.No.19849

CMA. No.741 of 2012

SJ(CO)
RVM(08/10/2021)