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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.518 of 2021

Yuvaneshwaran

... Appellant

Vs.

1.Anandha Raj

2.Royal Sundaram Alliance Insurance Company Limited,
Whites Road, Ground Floor,
Sundaram Towers, Royapettah,
Chennai - 600 014.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2019 made in M.C.O.P.No.1452 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.E.Rajadurai
for Mr.M.B.Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.09.2019 made in M.C.O.P.No.1452 of 2015 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.1452 of 2015 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.18,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.12.2014.

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 motorcycle



belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,02,750/- 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 suffered hip fracture and multiple injuries all over the body. The Regional Medical Board constituted by the Rajiv Gandhi Government General Hospital, Chennai examined the appellant and certified that appellant suffered 10% disability and issued disability certificate Ex.C1 to that effect. The Tribunal awarded a meagre sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2014 and the Tribunal ought to have awarded more amount towards disability. The appellant has lost his 100% earning capacity and the Tribunal ought to have awarded compensation for 100% loss of earning capacity. At the time of accident, the appellant was working as Electrician and was earning a sum of Rs.15,000/- per month. But the Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for two months. The appellant has taken treatment at Government Stanley Hospital as inpatient for three days from 29.12.2014 to 31.12.2014. The amounts awarded by the Tribunal towards loss of income, extra nourishment, pain and sufferings, attendant charges, transportation and disability are meagre. The Tribunal failed to award any amount towards medical expenses, future medical expenses and loss of amenities and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.30,000/- for 10% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation towards loss of earning capacity. The appellant has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,02,750/- as compensation to the appellant under different heads and the same is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

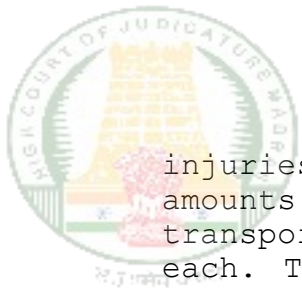


7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent- Insurance Company and perused the entire materials on record.

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8. It is the case of the appellant that in the accident he sustained Right Hip fracture and multiple injuries all over the body. The Medical Board constituted by the Rajiv Gandhi Government General Hospital, Chennai examined the appellant and certified that appellant suffered 10% disability and issued disability certificate Ex.C1 to that effect. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.30,000/- for 10% disability at the rate of Rs.3,000/- per percentage of disability and the same is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.40,000/- (Rs.4,000/- X 10% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity.

9. It is the contention of the appellant that at the time of accident, he was working as Electrician and was earning a sum of Rs.15,000/- per month. To prove the avocation and income, the appellant has produced the Ex.P8/copy of Vocational Training Certificate and Ex.P9/copy of Electronics Training Certificate. The Tribunal considering Exs.P8 & P9, held that the appellant has not filed any document like attendance register, wage register and salary certificate to prove his income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the appellant and awarded compensation towards loss of income for two months. The accident occurred in the year 2014 and the notional income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.14,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability suffered by the appellant in the accident, he would not have attended his work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.42,000/- (Rs.14,000/- X 3 months). The appellant has taken treatment at Government Stanley Hospital as inpatient for three days from 29.12.2014 to 31.12.2014. Considering the nature of



injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges and transportation are meagre and the same are enhanced to Rs.7,500/- each. The Tribunal has not awarded any amounts towards medical expenses and loss of amenities. Though the appellant has taken treatment in the Government Hospital, he would have incurred some medical expenses. Hence, a sum of Rs.7,500/- is awarded to the appellant towards medical expenses. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.15,000/- towards loss of amenities. 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 amounts awarded by the Tribunal under other heads are just and reasonable 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
1.	Disability	30,000/-	40,000/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transport to Hospital	2,000/-	7,500/-	Enhanced
5.	Attendant charges	750/-	7,500/-	Enhanced
6.	Future Prospects	20,000/-	20,000/-	Confirmed
7.	Loss of Income	20,000/-	42,000/-	Enhanced
8.	Medical expenses	-	7,500/-	Granted
9.	Loss of Amenities	-	15,000/-	Granted
	Total	Rs.1,02,750/-	Rs.1,69,500/-	Enhanced by Rs.66,750/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,02,750/- is hereby enhanced to Rs.1,69,500/- 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, to the credit of M.C.O.P.No.1452 of 2015 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.

+lcc to M/s.K.Varadhakamaraj, Advocate Sr.15479

C.M.A.No.518 of 2021

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srg 27/10/2021