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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.532 of 2021

K.Suresh

.. Appellant/Petitioner

Vs.

1.M.Dharmanayak

2.United India Insurance Company Limited,
104 - A, Ranga Building,
Peramannur Main Road,
Salem.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in the judgment and decree dated 08.10.2020 made in M.C.O.P.No.865 of 2015, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1) Salem.

For Appellant : Mr.K.Suryanarayanan
for Mr.M.Mohamed Riyaz

For Respondents : Mrs.I.Malar for R2

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 08.10.2020 made in M.C.O.P.No.865 of 2015, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1) Salem.

2.The appellant-claimant, filed MCOP No.865 of 2015, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1), Salem, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.10.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to



rash and negligent driving by driver of the Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the Lorry to pay a sum of Rs.8,46,620/- as compensation to the appellant.

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4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.10.2020 made in M.C.O.P.No.865 of 2015, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant suffered grievous injuries and has taken treatment as in-patient at Erode Sudha Hospital from 18.10.2014 to 24.10.2014. The Salem Medical Board examined the appellant and certified that the appellant suffered 30% disability. The Tribunal ought to have taken the disability at 40% for loss of vision, being a permanent disability and fracture of wrist, which is also a permanent disability and awarded more compensation towards disability and separately for loss of earning considering the judgments of the Hon'ble Apex Court. The Tribunal erred in fixing a meagre sum of Rs.7,500/- per month as notional income of the appellant, without considering the contention of the appellant that he was earning a sum of Rs.20,000/- per month as an Electrician. The Tribunal failed to grant any enhancement towards future prospects. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal considering Ex.C1 - disability certificate issued by the Medical Board, Salem, accepted the disability certificate issued by the Medical Board, adopted multiplier method and granted compensation for 30% disability. The appellant failed to prove his avocation and income. In the absence of any material evidence, the Tribunal excessively fixed a sum of Rs.7,500/- per month as notional income of the appellant. The total compensation awarded by the Tribunal is also excessive. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. It is the case of the appellant that in the accident, he suffered loss of vision in left eye and multiple injuries, all over the body. He has taken treatment as in-patient at the Erode Sudha Hospital from 18.10.2014 to 24.10.2014. To prove the same, he has filed discharge summary and marked the same as



Ex.P4. The Medical Board, Salem examined the appellant and certified that the appellant suffered 30% disability. As per Ex.P13- Aadhar card, the age of the appellant is 30 years. The Tribunal, considering the nature of injuries, loss of vision in left eye and nature of work done by the appellant, rightly applied multiplier '17', granted 40% enhancement towards future prospects and awarded compensation by adopting multiplier method. It is the case of the appellant that at the time of accident, he was working as an Electrician and was earning a sum of Rs.20,000/- per month. He did not file any document to prove the same. In the absence of any evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- per month as notional income and the same is meagre. The accident is of the year 2014. Considering the year of accident and nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. Hence, the amounts granted by the Tribunal towards 30% permanent disability is modified to Rs.10,28,160/- [Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-) x 12 x 17 x 30%]. 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.	Medical expenses	43,020/-	43,020/-	Confirmed
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Extra nourishment	20,000/-	20,000/-	Confirmed
4.	Attendant charges	20,000/-	20,000/-	Confirmed
5.	Transportation	20,000/-	20,000/-	Confirmed
6.	Damage to clothes	1,000/-	1,000/-	Confirmed
7.	Loss of amenities	50,000/-	50,000/-	Confirmed
8.	Permanent disability	6,42,600/-	10,28,160/-	Enhanced



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Total	8,46,620/-	12,32,180/-	Enhanced by Rs.3,85,5 60/-
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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,46,620/- is enhanced to Rs.12,32,180/- 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, 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.865 of 2015. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Motor Accident Claims Tribunal
Special Subordinate Judge No.I,
Salem.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.Mohamed Riyaz, Advocate, S.R.No.16961
+1cc to Mr.T.Ravichandran, Advocate, S.R.No.17943

C.M.A.No.532 of 2021

RSI (CO)
CB(30/09/2021)