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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.782 of 2021

Kathiravan

...Appellant/Claimant

Vs.

1.Pandiyan

2.The Oriental Insurance Company Limited,
Siva Complex, 2nd Floor, 22-C,
Saradha College Main Road,
Salem - 636 016.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2020 made in M.C.O.P.No.1948 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents :Mr.J.Chandran (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 09.01.2020 made in M.C.O.P.No.1948 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem.

2.The appellant-claimant, filed M.C.O.P.No.1948 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.06.2017.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Auto and directed the 2nd respondent as insurer of the Auto to pay a sum of Rs.1,70,889/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.01.2020 made in M.C.O.P.No.1948 of 2017, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that at the time of accident, the appellant was working as a Coolie under contract basis and was earning a sum of Rs.12,000/- per month. In the accident, the appellant suffered grievous injuries and fractures and has taken first aid treatment at the Government Mohan Kumaramangalam Medical College Hospital at Salem and then, took in-patient treatment at the Universal Hospital, Kondalampatty in Salem from 09.06.2017 to 16.06.2017, for a period of 8 days. The appellant has underwent surgery and intramedullary K-wire has been fixed in the 2nd Metatarsal bone. The appellant was referred to the Medical Board. The Medical Board examined the appellant and certified that the appellant suffered 10% permanent disability. The Tribunal granted only a meagre sum of Rs.3,000/- per percentage for 10% disability, instead of granting Rs.5,000/- per percentage. Due to the injuries sustained in the accident, the appellant could not do any work without the help of others and he is suffering very much by pain and swelling. The amounts awarded by the Tribunal towards loss of income, pain and suffering, extra nourishment, loss of amenities, attendant charges and transport expenses are meagre. The appellant is undergoing further treatment and periodical checkup. The Tribunal failed to award any amount towards future medical expenses. 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-Insurance Company contended that the Tribunal considering the nature of injuries, period of treatment taken by the appellant, awarded compensation under different heads, which are not meagre. 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 grievous injuries and fractures viz., Grade III B fracture in 2nd Metatarsal Left Foot and has taken treatment as in-patient at the Universal Hospital, Kondalampatty in Salem from 09.06.2017 to 16.06.2017, for a period of 8 days. During the treatment period, the appellant underwent surgery and intramedullary K-wire has been fixed in the 2nd Metatarsal bone. To prove the same, he has produced discharge summary and marked the same as Ex.P4. The appellant was referred to the Medical Board. The Medical Board, Omalur examined the appellant and certified that the appellant suffered 10% disability. The Tribunal accepting the same, has awarded a sum of Rs.30,000/- towards disability, at the rate of Rs.3,000/- per percentage for 10% disability. 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 2017. In view of the same, the appellant is entitled to a sum of Rs.5,000/- per percentage of disability. Hence, the amount awarded by the Tribunal towards permanent disability is modified to Rs.50,000/- [10% x Rs.5,000/-], at the rate of Rs.5,000/- per percentage for 10% disability. Considering the nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded by the Tribunal towards pain and suffering, transportation charges, extra nourishment, attendant charges and damage to clothes are meagre and the same are enhanced to Rs.15,000/-, Rs.15,000/-, Rs.15,000/-, Rs.15,000/- and Rs.2,000/- respectively. Due to the injuries suffered in the accident, the appellant would have suffered discomfort. The amount awarded towards loss of amenities is meagre and hence, the same is enhanced to Rs.20,000/-.

9.The learned counsel appearing for the appellant further contended that at the time of accident, the appellant was working as a Coolie in contract basis and was earning a sum of Rs.12,000/- per month. Due to the injuries sustained in the accident, he could not do his work as he was doing earlier. The appellant did not file any document to prove his avocation and income. In the absence of any evidence, the Tribunal fixed a sum of Rs.7,500/- per month as notional income and awarded a sum of Rs.22,500/- towards loss of income for three months. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of accident and nature of work done by the appellant, a sum of Rs.12,000/- per month, as claimed by the appellant is fixed as notional income. Due to the



injuries sustained in the accident, the appellant would not have worked atleast for a period of four months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.48,000/- [Rs.12,000/- x 4 months], at the rate of Rs.12,000/- per month for four months. 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.	Pain and sufferings	10,000/-	15,000/-	Enhanced
2.	Loss of income	22,500/-	48,000/-	Enhanced
3.	Medical expenses	74,889/-	74,889/-	Confirmed
4.	Transportation charges	7,500/-	15,000/-	Enhanced
5.	Extra nourishment	7,500/-	15,000/-	Enhanced
6.	Attendant charges	7,500/-	15,000/-	Enhanced
7.	Damage to clothes	1,000/-	2,000/-	Enhanced
8.	Loss of amenities	10,000/-	20,000/-	Enhanced
9.	Permanent disability	30,000/-	50,000/-	Enhanced
	Total	1,70,889/-	2,54,889/-	Enhanced by Rs.84,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,70,889/- is enhanced to Rs.2,54,889/- 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.1948 of



2017. 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.

s/d-
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),
Salem.

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

+2 Ccs to Mr.T.S.Arthanareeswaran, Advocate sr 17463.
+1 CC to Mr.J.Chandran, Advocate sr 17525.

C.M.A.No.782 of 2021

LN(CO)
SP(12/11/2021)