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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2557 of 2019

A. Appandai Rajan .. Appellant / Petitioner
Vs.

1.M. Kannan

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, Chennai 600 001,
Now at,
"Bombay Mutual Building", 6th Floor,
No.232, N.S.C. Bose Road,
Chennai 600 001. .. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.10.2018, made in M.C.O.P. No.7901 of 2013, on the file of the Special Sub Judge-I, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.K.A.Ravindran
for M/s.A.Shanmugaraj

For Respondents : Mr. J.Chandran (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 01.10.2018, made in M.C.O.P. No.7901 of 2013, on the file of the Special Sub Judge-I, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.7901 of 2013, on the file of the Special Sub Judge-I, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.16,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.01.2007.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only 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 offending vehicle, to pay a sum of Rs.5,22,750/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 01.10.2018, made in M.C.O.P. No.7901 of 2013, 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. The Tribunal awarded only meagre amounts for the injuries suffered by the appellant. The appellant has taken treatment as in-patient in Lifeline Hospital from 08.01.2007 to 24.01.2007, for a period of 17 days and underwent surgery. P.W.2 Doctor and the Government Peripheral Hospital, KK Nagar, Chennai examined the appellant and certified that the appellant suffered 60% disability. The appellant was a Driver at the time of accident and was earning a sum of Rs.4,000/- per month as salary and Rs.1,500/- per month as collection Batta. The Tribunal erroneously fixed the monthly income of the appellant as Rs.4,000/-, instead of Rs.5,500/-. The appellant proved the injuries and disability suffered, by examining P.W.2 Doctor and filed documents. The Tribunal failed to grant any compensation for loss of earning power separately. The Tribunal ought to have adopted the multiplier method and awarded compensation and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove that he suffered functional disability and the appellant also failed to prove Ex.P12- salary certificate by examining author of the same. He has not filed any document with regard to salary voucher and attendance register. The Tribunal, in the absence of any evidence, rejected the contention of the appellant that he was earning a sum of Rs.5,500/- including batta and fixed a sum of Rs.4,000/- per month. The Tribunal accepted the disability certificate issued by the Government Peripheral Hospital and P.W.2 Doctor and considering the evidence and documents, held that the appellant has not suffered any functional disability and appellant has not proved the same by oral and documentary evidence. The appellant has also not proved



by oral and documentary evidence that his future earnings are affected. Hence, the Tribunal rightly granted compensation by adopting percentage method. The amounts granted by the Tribunal is excessive and appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that it is the contention of the appellant that he suffered injuries and fracture and he has taken treatment as in-patient in Lifeline Hospital for a period of 17 days. According to the appellant, he was working as a Driver and was earning a sum of Rs.4,000/- per month as salary and Rs.1,500/- per month as collection Batta. The appellant marked the salary certificate as Ex.P12. He has not examined the author of the document. In the absence of any materials, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the appellant. The accident is of the year 2007. Considering the date of accident and contention of the learned counsel appearing for the appellant, the notional income of the appellant is fixed as Rs.5,500/- per month, as claimed by the appellant. The appellant has not filed any material to show that he suffered functional disability. From the discharge summary, disability certificate and evidence of P.W.2 Doctor, it is seen that nothing is stated with regard to functional disability or loss of earning capacity as alleged by the learned counsel for the appellant. In the discharge summary, the appellant was advised to take some medicines and to take rest for 6 weeks. In the absence of any material evidence to show that appellant suffered functional disability and lost income, the appellant is not entitled to compensation towards loss of earning, by adopting multiplier method. In view of the above materials, the award of the Tribunal granting compensation by adopting percentage method is proper and valid and he is not entitled to any enhancement towards disability and loss of earning power separately. Considering the period of treatment taken and nature of injuries, the amounts granted by the Tribunal for transportation and attendant charges are meagre. Hence, the same are enhanced to Rs.7,000/- and Rs.10,000/- respectively.



9. Due to the injuries sustained in the accident, the appellant would not have worked at least for a period of six months. Thus, the compensation granted by the Tribunal towards loss of income is modified to Rs.33,000/- (Rs.5,500/- x 6 months), at the rate of Rs.5,500/- per month for six months. The Tribunal failed to award any amount towards loss of amenities and damages to clothes. Hence, a sum of Rs.10,000/- and Rs.1,000/- are awarded towards loss of amenities and damages to clothes respectively. 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	1,80,000/-	1,80,000/-	Confirmed
2.	Pain and suffering	15,000/-	15,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation	3,000/-	7,000/-	Enhanced
5.	Damages to clothes	-	1,000/-	Granted
6.	Attendant charges	4,250/-	10,000/-	Enhanced
7.	Hospital and Medical expenses	2,83,490/-	2,83,490/-	Confirmed
8.	Loss of earnings	12,000/-	33,000/-	Enhanced
9.	Loss of future prospects	15,000/-	15,000/-	Confirmed
10.	Loss of amenities	-	10,000/-	Granted
	Total	5,22,740/- rounded off to 5,22,750/-	5,64,490/- rounded off to 5,64,500/-	Enhanced by Rs.41,750/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,22,750/- is enhanced to



Rs.5,64,500/- 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, 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.7901 of 2013. 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

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Special Subordinate Judge-I,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.1697

C.M.A.No.2557 of 2019

VBA(CO)
SB(20/09/2021)