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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.741 of 2021

Thangavel

...Appellant / Petitioner

Vs.

1.Ramesh

2.Raju

3.The Divisional Manager,
The New India Assurance Company Limited,
Office at Mettur Road,
Amman Complex,
Erode - 638 011.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.11.2020 made in M.C.O.P.No.208 of 2018 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Erode at Bhavani.

For Appellant : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R3 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 24.11.2020 made in M.C.O.P.No.208 of 2018 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Erode at Bhavani.

3.The appellant is the claimant in M.C.O.P.No.208 of 2018 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Erode at Bhavani. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2018.



4.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 car owned by 2nd respondent and directed the respondents to jointly and severally pay a sum of Rs.4,00,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered fracture of right spine scapula, fractures of 4 to 10 ribs, right mild hemopneumothorax and movement of the right shoulder restricted and multiple injuries all over the body. The Medical Board, Erode examined the appellant and certified that appellant suffered 60% disability and issued disability certificate Ex.C1 to that effect. The Tribunal awarded a meagre sum of Rs.90,000/- towards disability at the rate of Rs.1,500/- per percentage of disability. The accident occurred in the year 2018 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 aged 47 years, working as Mason and was earning a sum of Rs.20,000/- per month. But the Tribunal fixed a meagre sum of Rs.9,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for five months. The appellant has taken treatment at Bharani Paventhan Multi Speciality Hospital as inpatient for 11 days from 28.05.2018 to 07.06.2018 and further at Ganga Medical Care and Hospital for 6 days from 06.08.2018 to 11.08.2018. The amounts awarded by the Tribunal towards loss of income, extra nourishment, pain and sufferings, transportation and disability are meagre. The Tribunal failed to award any amount towards attendant charges, future medical expenses and loss of amenities and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.90,000/- for 60% disability at the rate of Rs.1,500/- 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.9,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant failed to produce any materials to substantiate that he requires future medical



treatment. Hence, he is not entitled for compensation towards future medical expenses. The Tribunal considering the entire materials on record, has awarded a sum of Rs.4,00,000/- 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.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent- Insurance Company and perused the entire materials on record.

9. It is the case of the appellant that in the accident he suffered fracture of right spine scapula, fractures of 4 to 10 ribs, right mild hemopneumothorax and movement of the right shoulder restricted and multiple injuries all over the body. To prove the nature of injuries and disability suffered by the appellant, he examined himself as P.W.1. He was referred to the Medical Board, Erode. The Medical Board, Erode examined the appellant and certified that appellant suffered 60% 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.90,000/- for 60% disability at the rate of Rs.1,500/- 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 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.3,00,000/- (Rs.5,000/- X 60% disability). The appellant has not examined any Doctor to prove that due to the injuries he suffered functional disability and he could not do any work as he was doing earlier. In the absence of any evidence with regard to loss of earning capacity or functional disability or reduction in income, the appellant is not entitled to any compensation by adopting multiplier method.

10. It is the further case of the appellant that at the time of accident, he was aged 47 years, working as Mason and was earning a sum of Rs.20,000/- per month. Except oral evidence, the appellant has not let in any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the age and avocation of the appellant, fixed a sum of Rs.9,000/- per month as notional income of the appellant and awarded compensation towards loss of income for five months. The accident occurred in the year 2018. The cost of living has increased enormously and



salary of even unskilled workers has increased substantially. Hence, a sum of Rs.15,000/- per month is fixed as notional income of the appellant. Thus, by fixing monthly income of the appellant at Rs.15,000/- per month, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.75,000/- (Rs.15,000/- X 5 months). The appellant has taken treatment as inpatient in two different spells at Bharani Paventhan Multi Speciality Hospital for 11 days from 28.05.2018 to 07.06.2018 and at Ganga Medical Care and Hospital for 6 days from 06.08.2018 to 11.08.2018. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant, this Court is of the view that he is entitled to a sum of Rs.20,000/- towards attendant charges. Due to injuries and disability suffered by the appellant, he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.20,000/- towards loss of amenities. Considering the nature of injuries suffered by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.20,000/-. 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. Considering the nature of injuries, disability and period of treatment, this Court is of the considered view that 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	90,000/-	3,00,000/-	Enhanced
2.	Pain and sufferings	60,000/-	60,000/-	Confirmed
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Medical expenses	1,85,000/-	1,85,000/-	Confirmed
6.	Loss of Income	45,000/-	75,000/-	Enhanced
7.	Attendant charges	-	20,000/-	Granted
8.	Loss of Amenities	-	20,000/-	Granted
	Total	Rs.4,00,000/-	Rs.6,90,000/-	Enhanced by Rs.2,90,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.4,00,000/- is hereby enhanced to Rs.6,90,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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.208 of 2018 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Erode at Bhavani. 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

// True Copy //

Sub Assistant Registrar

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To

1.The IV Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Bhavani, Erode.

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

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.16844

+1cc to Mr.J.Chandran, Advocate SR.No.16818

C.M.A.No.741 of 2021

VBM(CO)
RVM(01/11/2021)