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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1282 of 2018

A.Amanullah

.. Appellant

Vs.

1. M.Sankar

2. United India Insurance Company Ltd.,
235, Gandhi Market Road,
Arni. Thiruvannamalai District

.. Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.30 of 2010 dated 22.04.2016 on the file of the Motor Accident Claims Tribunal/Sub-court, Arni for the restricted claim of Rs.1,00,000/- with interests in addition to the Trial Court award.

For Appellant	:	M/s.P.Satheesh Kumar
For R1	:	Ex-parte
For R2	:	Mr.J.Chandran

JUDGMENT

The injured claimant in M.C.O.P.No.30 of 2010 on the file of the Motor Accident Claims Tribunal, Sub- Court, Tiruvannamalai is the appellant in this appeal. He has filed this appeal seeking enhancement of the compensation of Rs.94,845/- awarded by Tribunal.

2. According to the claimant, on 21.11.2009 at about 06.00 p.m., he was driving the motor cycle bearing registration number TN-23-C-0584 along with pillion rider. When he was nearing the place called Annapoondi junction, Virinjipuram village, Vellore District, the auto rickshaw bearing



registration number TN-23-AD-9364, belongs to the 1st respondent and insured with the 2nd respondent/Insurance Company, was driven by driver in a rash and negligent manner and hit against the claimant. In the impact, the claimant sustained severe injuries all over his body, particularly, injuries on both legs, hands, hip, right ear and fracture of left shoulder bone, fracture of right leg. He was admitted in Government Vellore Hospital, subsequently he was admitted in CMC Hospital, Vellore for further treatment. According to the claimant, at the time of accident, he was 37 years old and doing old iron scrap business through which he was earning Rs.12,000/- per month. By reason of injuries sustained, in the accident, the claimant could not continue his business, as before. It is specifically stated that the claimant could not lift heavy object due to mal-union of the bones in his shoulder. Therefore, the claimant has filed the claim petition, claiming a total sum of Rs.4,00,000/- as compensation.

3. On notice, the 2nd respondent/Insurance Company filed a counter affidavit. The counter filed by the second respondent is a total denial. The second respondent/Insurance Company, not only denied the manner in which the accident has occurred but also the particulars furnished by the claimant with reference to his income or the alleged loss of income sustained by the claimant. The 2nd respondent/Insurance Company also denied the nature of injuries said to have suffered by the claimant. Therefore, the 2nd respondent prayed for dismissal of this claim petition.

4. Before the Tribunal, the claimant examined himself as P.W.1 and the doctor who examined the claimant, by name Shanmugasundaram was examined as P.W.2. Exhibits P1 to P10 were marked on the side of the claimant. On the side of the Insurance Company, One Mr.Swaminathan, an employee of the Insurance Company was examined as R.W.1 through whom Exs.R1 to R3 were marked.

5. The Tribunal on analyzing the oral and documentary evidence concluded that the accident was caused due to the rash and negligent driving of the driver of the auto rickshaw. Before, the Tribunal, it was specifically defended on behalf of the Insurance Company that on the date of accident, there was no fitness certificate issued to the auto rickshaw and therefore, the auto rickshaw ought not to have plied on the road. This defense of the Insurance Company was rejected by the Trial Court on the ground that there was no documentary evidence filed to show that the fitness certificate issued in favour of the auto rickshaw had lapsed on the date of accident.

6. As regards the quantum of compensation, the Tribunal



awarded a sum of Rs.10,245/- and Rs.1,000/- towards medical expenses and loss of cloths, besides awarding Rs.5,000/- towards pain and suffering. In all, the Tribunal has awarded a total sum of Rs.94,845/- as compensation in favour of the appellant/claimant.

7. Assailing the award passed by the Tribunal, the learned counsel appearing for the appellant would submit that at the time of accident, the claimant was 37 years old and he was earning a sum of Rs.12,000/- per month through sale of old iron scrap business. However, the Tribunal fixed only a meager sum of Rs.3,000/- per month as his income which it is required to be enhanced. Subsequent, to the accident, he could not lift even normal objects due to mall-union of the shoulder bone. The Doctor-PW2, who examined the claimant certified the disability of claimant at 40%. It was vehemently contented that the Tribunal did not award any amount for loss of income during the period of treatment. Even assuming that the claimant was earning a sum of Rs.6,000/- per month, the Tribunal ought to have awarded a sum of Rs.30,000/- for the loss of income during the period of treatment, for 5 months. The amount awarded by the Tribunal under various other heads are not in consonance with injury suffered by the claimant. In-fact, the claimant is still taking treatment for the injuries he sustained in the accident. The Tribunal without regard to the above facts has awarded a very meager amount as compensation and it is requested to be scaled up.

8. On the above contention, this Court heard the learned counsel appearing for the 2nd respondent/Insurance company, who would only justify the award passed by the Tribunal as fair and reasonable.

9. Heard the learned counsel appearing on both sides and perused the material on records.

10. This is a case of injury. The claimant at the time of accident was 37 years old. Immediately after the accident, he had taken treatment at Government General Hospital, Vellore, from there he was referred to Christian Medical Hospital, Vellore. It is on record that the claimant had taken treatment for a period of 15 days as in-patient. PW2 is the Doctor who has examined the claimant and issued the disability certificate, certifying that disability suffered by the claimant is 40%. This was not disbelieved by the Tribunal. However, the Tribunal fixed a sum of Rs.3,000/- per month as notional income, applied



multiplier '14' taking note of the age of the claimant and awarded a sum of Rs.75,600/- towards partial disability. This approach of the Tribunal does not cut ice with this Court. When it is the case of injury and the claimant had suffered only 40% disability awarding compensation by resorting to multiplier method is not legally sustained. In any event, the Tribunal has not awarded any amount towards disability, but only for partial disability the sum of Rs.75,600/- was awarded. In the opinion of this Court, awarding a sum of Rs.2,000/- per percentage of disability would be fair and reasonable. Accordingly, for 40% disability, a sum of Rs.80,000/- (Rs.2,000 X 40) is hereby awarded to the claimant.

11. The Tribunal awarded a sum of Rs.10,245/- towards medical expenses which are based on medical records. Therefore, the amount awarded towards medical expenses is sustained.

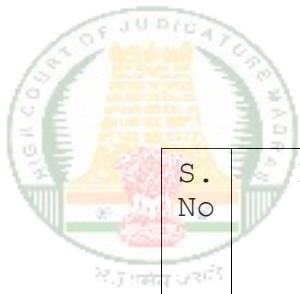
12. The Tribunal awarded a sum of Rs.5,000/- towards pain and suffering. The Claimant was taking treatment as in-patient for 15 days at Christian Medical College and Hospital. He has suffered mal-union of shoulder bone. Taking into note of the above, fact this Court is of the view that a sum of Rs.15,000/- has to be awarded towards pain and suffering which will be fair and reasonable.

13. The Tribunal awarded a sum of Rs.3,000/- towards transportation, which is very low. Instead a sum of Rs.5,000/- is hereby awarded by this Court towards compensation for transportation.

14. As rightly pointed out by the counsel appearing for appellant, the Tribunal did not award any amount towards loss of income for the period of treatment. Taking note of the period of hospitalization of the claimant, this Court is of the view that a sum of Rs.6,000/- per month can be awarded toward loss of income during the period of treatment for 3 months. Accordingly, a sum of Rs.18,000/- (Rs.6,000 X 3) is hereby awarded towards loss of income during the period of treatment.

15. The Tribunal has awarded a sum of Rs.1,000/- towards loss of clothing and it does not call for any interference by this Court and the same is hereby confirmed.

16. In the result, the amount awarded by the Tribunal at Rs.94,845/- is hereby enhanced to Rs.1,30,000/- as mentioned below.



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	75,600/-	80,000/-	Enhanced
2.	Medical expenses	10,245/-	10,245/-	Confirmed
3.	Pain & sufferings	5,000/-	15,000/-	Enhanced
4.	Transportation	3,000/-	5,000/-	Enhanced
5.	Loss of cloth	1,000/-	1,000/-	Confirmed
6.	Loss of income during treatment period	-	18,000/-	Granted
	Total	Rs.94,845/-	Rs.1,29,245/- Rounded off to Rs.1,30,000/-	Rs.35,155/-

17. In the result, the judgment and decree passed in M.C.O.P.No.30 of 2010 dated 22.04.2016 on the file of the Motor Accident Claims Tribunal/Sub-court, Arni, is modified. This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.94,845/- is hereby enhanced to Rs.1,30,000/- with interest at the rate of 7.5% per annum from the date of filing claim petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.30 of 2010 dated 22.04.2016 on the file of the Motor Accident Claims Tribunal/Sub-court, Arni. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi



To

1. The Sub-Judge,
Motor Accident Claims Tribunal,
Arni.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.64989

C.M.A.No.1282 of 2018

JP(CO)
SU(09/06/2022)