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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.895 of 2021

M.Senthil

.. Appellant/Petitioner

Vs.

1.G.Ethiraj

2.ICICI Lombard General Insurance Company Limited,
No.142, 1st Floor, ECR Main Road,
Near Latha Steel House,
Kottupalayam,
Pondicherry.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.10.2020 made in M.C.O.P. No.175 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Poonamallee, Thiruvallur District.

For Appellant : Mr.M.Sivakumar
for Mr.C.Prabakaran

For Respondents : M/s.R.Sreevidhya (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 29.10.2020 made in M.C.O.P. No.175 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Poonamallee, Thiruvallur District.



2.The appellant-claimant, filed M.C.O.P. No.175 of 2016, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Poonamallee, Thiruvallur District, claiming a sum of Rs.2,03,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2016.

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 owned by the 1st respondent and directed the 2nd respondent as insurer of the Lorry to pay a sum of Rs.36,787/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.10.2020 made in M.C.O.P. No.175 of 2016, 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 injury in left shoulder and has taken treatment at NILA Hospital, Chennai and spent a sum of Rs.49,104/- towards medical expenses. The appellant produced Ex.P4 to substantiate the same. The medical bills produced by the appellant are genuine and correct and they are not repetition of other bills produced thereon. In the absence of any rebuttal evidence to disprove the medical bills produced by the appellant, the Tribunal awarded only meagre sum of Rs.24,037/-, instead of Rs.49,104/-. The amounts awarded by the Tribunal towards transportation, attendant charges, pain and suffering and extra nourishment are meagre. The Tribunal failed to award any amount towards loss of amenities and permanent disability. 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 Ex.P4 - medical bills, found that the bills are in repetition and rightly awarded a sum of Rs.24,037/- towards medical expenses. The Tribunal considering the nature of injuries suffered by the appellant, awarded compensation under different heads which are just and reasonable. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.



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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 sustained grievous injuries and has taken treatment as in-patient at Nila Hospital for a period of two days. He was referred to the Medical Board. The Medical Board examined the appellant and certified that there is no injury and the disability is "Nil". The Tribunal considering the disability certificate marked as Ex.C1, rightly did not award any amount towards permanent disability. The appellant contended that he has spent a sum of Rs.49,104/- towards medical expenses and marked the medical bills as Ex.P4. The Tribunal erroneously reduced the same to Rs.24,037/- stating that the medical bills are in repetition. A perusal of Ex.P4 shows that the appellant spent Rs.49,104/- towards medical expenses. Considering the medical bills marked by the appellant as Ex.P4, a sum of Rs.49,104/- as claimed by the appellant is awarded towards medical expenses. Due to the injuries sustained in the accident, the appellant would have suffered acute pain and suffering. Considering the nature of injuries, period of treatment taken and the inconvenience suffered by the appellant, the amounts awarded by the Tribunal towards extra nourishment, transportation charges, attendant charges and pain and suffering are meagre and the same are enhanced to Rs.5,000/-, Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively.

9. It is the contention of the appellant that at the time of accident, the appellant was working as a Lorry Cleaner at Maruti Brick Works, Chennai and was earning a sum of Rs.10,000/- per month. He did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded a sum of Rs.3,250/- towards loss of income for two weeks. The accident is of the year 2016. Considering the year of accident and nature of work done by the appellant, the notional income fixed by the Tribunal is enhanced to Rs.10,000/- per month. Due to the injuries sustained in the accident, the appellant would not have worked at least for a period of two months. Hence, the amounts awarded by the Tribunal



towards loss of income is enhanced to Rs.20,000/- [Rs.10,000/- x 2 months] at the rate of Rs.10,000/- per month for two months. Considering the nature of injuries and disability, 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.	Expenses relating to hospitalization and medicines treatment	24,037/-	49,104/-	Enhanced
2.	Pain and suffering	5,000/-	10,000/-	Enhanced
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Attendant charges	1,000/-	5,000/-	Enhanced
5.	Damage to clothes	500/-	500/-	Confirmed
6.	Transportation	1,000/-	5,000/-	Enhanced
7.	Loss of earning during treatment	3,250/-	20,000/-	Enhanced
	Total	36,787/-	94,604/-	Enhanced by Rs.57,817/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.36,787/- is enhanced to Rs.94,604/- 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.175 of 2016.



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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

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Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Poonamallee,
Thiruvallur District.

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

+1cc to M/s.C.Prabhakaran, Advocate, S.R.No.18930

+1cc to Mrs.R.Sreevidya, Advocate, S.R.No.19201

C.M.A.No.895 of 2021

VG-II(CO)

SB(21/10/2021)