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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.853 of 2021

A.Chandran

...Appellant / Petitioner

Vs.

1.B.Karthick

2.HDFC Ergo General Insurance Company Limited,
New No.528, Old No.559, 2nd Floor,
Anna Salai, Teynampet,
Chennai - 600 018.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.08.2020 made in M.C.O.P.No.3302 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.Amar Dinesh Pandiya

For R2 : Mrs.R.Sreevidhya

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 06.08.2020 made in M.C.O.P.No.3302 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3302 of 2017 on the file of the Motor Accident Claims Tribunal, Special



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Sub Court No.I, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.05.2017.

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 1st respondent and directed the 2nd respondent -Insurance Company to pay a sum of Rs.6,22,400/- 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 sustained Grade III B Compound both bone fracture right leg with bone loss which leads to amputation of right lower limb above knee. The Doctors from GPH, K.K.Nagar Hospital, Chennai examined the appellant and certified that appellant suffered 80% disability and issued Ex.P5/disability certificate to that effect. The Tribunal awarded compensation for 80% disability at the rate of Rs.3,000/- per percentage of disability. Due to the injuries sustained in the accident, the appellant could not do the work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity as the injuries sustained by the appellant are scheduled injury. At the time of accident, the appellant was working as Sweeper in the Office of the Assistant Commissioner, Chennai Corporation, Sholinganallur, Chennai and was earning a sum of Rs.30,000/- per month. To prove the avocation and income, the appellant produced Ex.P14/salary slip but the Tribunal fixed a meagre sum of Rs.8,121/- per month as notional income of the appellant. The appellant has taken treatment as inpatient at Rajiv Gandhi Government General Hospital from 13.05.2017 to 14.06.2017 and at B.P.Jain Hospital from 14.06.2017 to 22.06.2017 for 41 days. Due to disability, the appellant is not in a position to attend his social activities. The Tribunal failed to award any amount towards loss of amenities. The amounts awarded by the Tribunal towards disability, attendant charges, transportation, pain and sufferings, extra nourishment and loss of income are meagre and prayed for enhancement of compensation.

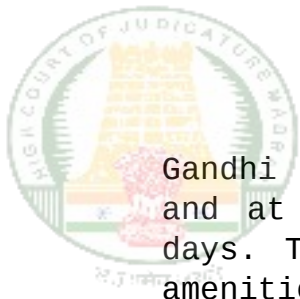


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7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted Ex.P5/disability certificate issued by the GPH, K.K.Nagar Hospital, Chennai and awarded a sum of Rs.2,40,000/- for 80% disability at the rate of Rs.3,000/- 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 amounts awarded by the Tribunal under different heads are not meagre. The Tribunal has awarded excessive sum of Rs.2,00,000/- for loss of future prospects and hence, the appellant is not entitled to any enhancement 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 2nd respondent-Insurance Company and perused the entire materials on record.

9. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained Grade III B Compound both bone fracture right leg with bone loss which leads to amputation of right lower limb above knee. To prove the nature of injuries and disability suffered by the appellant, he examined himself as P.W.1 and filed Exs.P3 to P5 to that effect. The Doctors from GPH, K.K.Nagar Hospital, Chennai examined the appellant and certified that appellant suffered 80% disability and issued Ex.P5/disability certificate to that effect. The Tribunal accepted Ex.P5/disability certificate issued by the GPH, K.K.Nagar Hospital, Chennai and awarded a sum of Rs.2,40,000/- for 80% disability at the rate of Rs.3,000/- per percentage of 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, 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.4,00,000/- (Rs.5,000/- X 80% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method. The appellant has taken treatment as inpatient at Rajiv



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Gandhi Government General Hospital from 13.05.2017 to 14.06.2017 and at B.P.Jain Hospital from 14.06.2017 to 22.06.2017 for 41 days. The Tribunal failed to award any amount towards loss of amenities and damages to clothes. Considering the nature of injuries, disability suffered by the appellant and amputation, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.1,00,000/- towards loss of amenities and Rs.5,000/- towards damages to clothes. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre and hence, the same are enhanced to Rs.40,000/-, Rs.20,000/- and Rs.40,000/- respectively. 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.	Disability	2,40,000/-	4,00,000/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Loss of future prospects	2,00,000/-	2,00,000/-	Confirmed
4.	Extra nourishment	20,000/-	40,000/-	Enhanced
5.	Attendant charges	10,250/-	40,000/-	Enhanced
6.	Medical expenses	92,135/-	92,135/-	Confirmed
7.	Transportation	10,000/-	20,000/-	Confirmed
8.	Loss of amenities	-	1,00,000/-	Granted
9	Damages to clothes	-	5,000/-	Granted
	Total	Rs.6,22,385/- rounded off to Rs.6,22,400/-	Rs.9,47,135/- rounded off to Rs.9,47,200/-	Enhanced by Rs.3,24,800/-



10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,22,400/- is hereby enhanced to Rs.9,47,200/- 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, 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.3302 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. 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/-
Deputy Registrar (AD-II)

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Sub Assistant Registrar

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To

1. The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to M/s.R.Sreevidya, Advocate SR.No.19202
+1cc to M/s.Amar D. Pandiya, Advocate SR.No.18567

C.M.A.No.853 of 2021

SVI(CO)
RVM(21/10/2021)