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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.907 of 2021

A.Gopalakrishnan ... Appellant/Petitioner

Vs.

1.P.Ponnaiyan

2.The National Insurance Company Limited,
No.803 A, 8th floor, Tower C,
Konnectus Building,
Opp. to New Delhi Railway Station,
Bhavbuti Marg, New Delhi (St) - 110 002.

3.The National Insurance Company Limited,
Selvanayagi Complex,
Perundurai Road,
Near Collector Office,
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 order dated 10.03.2020 made in M.C.O.P. No.324 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.SP.Yuvaraj

For Respondents : Mr.J.Chandran (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 10.03.2020 made in M.C.O.P. No.324 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.



2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.

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3.The appellant/claimant filed M.C.O.P.No.324 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.09.2017.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.2,22,650/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the 3rd respondent-Insurance Company.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 10.03.2020 made in M.C.O.P. No.324 of 2018, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained injuries like multiple linear displaced fracture in spine of left scapula and lateral end of left clavicle with adjacent chest wall haematoma, left frontal and parietal scalp haematoma with lacerations, ethmoid sinusitis and several injuries all over the body. He has taken treatment as in-patient at Hospital for a period of 9 days. P.W.2 Doctor examined the appellant and certified that the appellant suffered 20% permanent disability. The amount awarded by the Tribunal towards disability at the rate of Rs.3,000/- per percentage is very meagre, considering the fact that the accident is of the year 2017. Considering the nature of injuries and period of treatment taken, the Tribunal ought to have awarded more compensation under different heads and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that considering the nature of injuries suffered and period of treatment taken by the appellant, the Tribunal has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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



9. It is the case of the appellant that in the accident, he suffered grievous injuries and has taken treatment as in-patient at Akshaya Hospital, Namakkal from 21.09.2017 to 30.09.2017, for a period of 9 days. P.W.2 Doctor examined the appellant and certified that the appellant suffered 20% permanent disability. The Tribunal awarded a sum of Rs.60,000/- towards disability at the rate of Rs.3,000/- per percentage for 20% disability, which 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 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- ($\text{Rs.5,000/-} \times 20\%$), at the rate of Rs.5,000/- per percentage for 20% disability. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation charges are meagre and the same are enhanced to Rs.20,000/- and Rs.15,000/- respectively. The Tribunal failed to award any amount towards damage to clothes and loss of amenities. The appellant would have suffered inconvenience due to the injuries suffered in the accident. Hence, a sum of Rs.15,000/- is granted towards loss of amenities and a sum of Rs.3,000/- is granted towards damage to clothes.

10. According to appellant, at the time of accident, he was doing Centring Work and was earning a sum of Rs.18,000/- per month. He did not file any document to prove the same. In the absence of any evidence, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the appellant, which is meagre. The accident is of the year 2017. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.14,000/- per month is fixed as the notional income of the appellant. Due to the injuries sustained in the accident, he would not have worked at least for a period of five months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.70,000/- [$\text{Rs.14,000/-} \times 5 \text{ months}$]. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	42,650/-	42,650/-	Confirmed
2.	Extra nourishment	10,000/-	20,000/-	Enhanced
3.	Pain and sufferings	35,000/-	35,000/-	Confirmed
4.	Disability	60,000/-	1,00,000/-	Enhanced
5.	Transportation charges	5,000/-	15,000/-	Enhanced
6.	Attendant charges	20,000/-	20,000/-	Confirmed
7.	Loss of income	50,000/-	70,000/-	Enhanced
8.	Loss of amenities	-	15,000/-	Granted
9.	Damage to clothes	-	3,000/-	Granted
	Total	2,22,650/-	3,20,650/-	Enhanced by Rs.98,000/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,22,650/- is enhanced to Rs.3,20,650/- 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.324 of 2018. 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. The appeal is dismissed as against the 3rd respondent-Insurance Company. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Special District Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+lcc to Mr.J.Chandran, Advocate Sr.19277
+lcc to Mr.S.P.Yuvaraj, Advocate Sr.19505

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