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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.928 of 2021

Ananda Prabhu

.. Appellant/Petitioner

Vs.

1.Suresh Babu

2.The United India Insurance Company Limited,
Divisional Office, HUB Ranga Building,
Peramanur Main Road, Peramanur,
Salem - 636 007.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2020 made in M.C.O.P. No.1580 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : M/s.I.Malar (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 28.02.2020 made in M.C.O.P. No.1580 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem.

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.

3.The appellant/claimant filed M.C.O.P.No.1580 of 2017, on the file of the Special Sub Court No.I, (Motor Accidents Claims Tribunal), Salem, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.02.2017.



4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by 1st respondent, driver-cum-owner of the Car and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.8,23,926/- as compensation to the appellant.

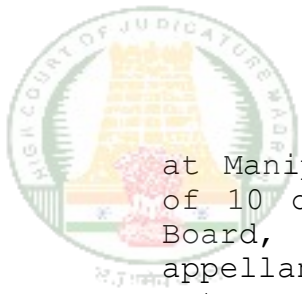
5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 28.02.2020 made in M.A.C.T.O.P. No.1580 of 2017, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and fracture like posterior dislocation in left knee, popliteal artery contusion left lower with vascular compromise left leg, fracture in left fibula and cut injury and extensor tendon in little finger and wrist. He has taken treatment as in-patient at Manipal Hospital from 08.02.2017 to 17.02.2017, for a period of 10 days. He has spent a sum of Rs.5,57,926/- towards medical expenses. The Medical Board examined the appellant and certified that the appellant suffered 35% permanent disability. The disability certificate reveals that the appellant has difficulty in squatting, sitting cross legged, pain in knee, paresthesia over left leg and weakness in grasp over left hand, grip strength weakness in foot dorsiflexion. Considering the nature of injuries, the Tribunal ought to have awarded compensation by adopting multiplier method. The amounts awarded by the Tribunal towards pain and suffering, loss of income, extra nourishment, attendant charges and transportation charges are meagre. The Tribunal failed to award any amount towards future medical expenses. The total compensation awarded by the Tribunal is meagre 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 under different heads, 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

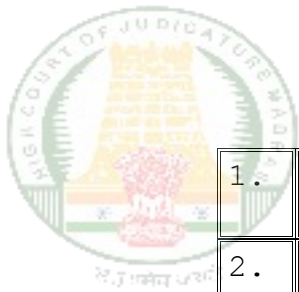


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at Manipal Hospital from 08.02.2017 to 17.02.2017, for a period of 10 days. He was referred to the Medical Board. The Medical Board, Omalur examined the appellant and certified that the appellant suffered 35% permanent disability. The appellant has not produced any document to prove that he suffered functional disability and lost his earning capacity. In the absence of any document, the Tribunal has not adopted multiplier method, which is proper. The Tribunal awarded a sum of Rs.1,05,000/- towards disability at the rate of Rs.3,000/- per percentage for 35% 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. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,75,000/- (Rs.5,000/- x 35%), at the rate of Rs.5,000/- per percentage for 35% disability. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and suffering, extra nourishment, attendant charges and damage to clothes are meagre and hence, the same are enhanced to Rs.50,000/-, Rs.25,000/-, Rs.25,000/- and Rs.3,000/- respectively.

10. According to appellant, at the time of accident, he was running a Recharging mobile shop in the name of KMR Communication and was earning a sum of Rs.22,000/- 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.7,500/- 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.15,000/- per month is fixed as the notional income of the appellant. Due to the injuries sustained in the accident, he would not have worked atleast for a period of six months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.90,000/- [Rs.15,000/- x 6 months]. Considering the nature of injuries, disability and period of treatment, this Court is of the 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



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1.	Pain and sufferings	35,000/-	50,000/-	Enhanced
2.	Loss of income	45,000/-	90,000/-	Enhanced
3.	Medical expenses	5,57,926/-	5,57,926/-	Confirmed
4.	Transportation charges	15,000/-	15,000/-	Confirmed
5.	Extra nourishment	15,000/-	25,000/-	Enhanced
6.	Attendant charges	15,000/-	25,000/-	Enhanced
7.	Damage to clothes	1,000/-	3,000/-	Enhanced
8.	Loss of amenities	35,000/-	35,000/-	Confirmed
9.	Permanent disability	1,05,000/-	1,75,000/-	Enhanced
	Total	8,23,926/-	9,75,926/-	Enhanced by Rs.1,52,000/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,23,926/- is enhanced to Rs.9,75,926/- 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.1580 of 2017. 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(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge No.I,
(Motor Accident Claims Tribunal),
Salem.



Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.20305

C.M.A.No.928 of 2021

AJS (CO)
CB(21/09/2021)