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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3840 of 2019

Balraj

...Appellant

Vs.

1. Prabakaran

2. Manager, Reliance General Insurance Co. Ltd.,
III Floor, No.408,
Perundurai Salai,
Erode,
Erode District.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2018 made in M.C.O.P. No.29 of 2015, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Namakkal.

For Appellant : Mr.A.Sathishkumar
for M/s.C.Thangaraju

For Respondents : No appearance (For R1)
Mrs.C. Bhuvanasundari (For R2)

J U D G M E N T

This appeal has been filed for enhancement of compensation granted by the award dated 01.02.2018 made in M.C.O.P. No.29 of 2015, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Namakkal.

2.The appellant-claimant filed M.C.O.P. No.29 of 2015, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Namakkal, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.08.2014.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and directed the respondents to pay a sum of Rs.3,68,200/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 01.02.2018 made in M.C.O.P. No.29 of 2015, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injury and has taken treatment as in-patient at C.M. Hospital for 77 days. P.W.2 Doctor assessed the appellant and certified that the appellant suffered 40% disability. The appellant was working as a Heavy Vehicle Driver, at the time of accident and was earning a sum of Rs.15,000/- per month. The Tribunal ought to have adopted multiplier method and awarded a sum of Rs.8,64,000/- [Rs.12,000/- x 40/100 x 15], towards disability. The Tribunal has erroneously taken the Hospitalized period as 17 days, instead of 77 days and awarded only meagre amount towards loss of income. The Tribunal ought to have awarded a sum of Rs.1,44,000/- [Rs.12,000/- x 12 months] towards loss of income. The Tribunal failed to award any amount towards mental agony and future medical expenses. The amounts awarded by the Tribunal towards attendant charges, extra nourishment and pain and suffering are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence to prove the avocation and income, the Tribunal rightly fixed monthly income of the appellant at Rs.7,500/- and awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

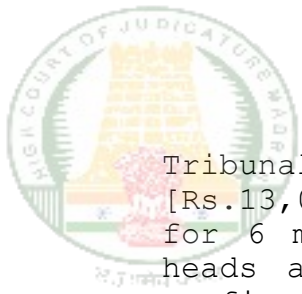
7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

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



9. From the materials on record, it is seen that it is the case of the appellant that in the accident he suffered grievous injuries and has taken treatment at C.M. Hospital, Namakkal from 12.08.2014 to 28.10.2014, for a period of 77 days. P.W.2 Doctor has examined the appellant and certified that the appellant suffered 40 % disability. To prove the same, the appellant has marked wound certificate, discharge summary and disability certificate as Exs.P5, P8 and P11 respectively. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to compensation for loss of earning capacity by adopting multiplier method. The Tribunal has awarded a sum of Rs.1,20,000/- towards disability, at the rate of Rs.3,000/- per percentage for 40% 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,60,000/- [Rs.4,000/- x 40%], at the rate of Rs.4,000/- per percentage for 40% disability. The Tribunal failed to award any amount towards attendant charges and loss of amenities. Considering the period of treatment taken and the inconvenience suffered by the appellant due to the injuries sustained in the accident, a sum of Rs.30,000/- each is awarded towards attendant charges and loss of amenities. The Tribunal failed to award any amount for damage to clothes. Hence, a sum of Rs.2,000/- is awarded towards damage to clothes. Considering the nature of injuries sustained in the accident, the meagre amount of Rs.10,000/- awarded towards extra nourishment is enhanced to Rs.30,000/-.

10. It is the contention of the appellant that at the time of accident, he was working as a Heavy Vehicle Driver and was earning a sum of Rs.15,000/- per month. He failed to prove the same. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a meagre sum of Rs.7,500/- per month as notional income. The accident is of the year 2014. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.13,000/- per month, is fixed as notional income. The Tribunal has awarded a sum of Rs.15,000/- towards loss of income for two months. Due to the accident, the appellant would not have worked at least for a period of six months. Thus, the compensation granted by the



Tribunal towards loss of income is modified to Rs.78,000/- [Rs.13,000/- x 6 months], at the rate of Rs.13,000/- per month for 6 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	15,000/-	78,000/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	10,000/-	30,000/-	Enhanced
4.	Medical expenses	1,78,200/-	1,78,200/-	Confirmed
5.	Permanent disability	1,20,000/-	1,60,000/-	Enhanced
6.	Pain and sufferings	40,000/-	40,000/-	Confirmed
7.	Attendant charges	-	30,000/-	Granted
8.	Loss of amenities	-	30,000/-	Granted
9.	Damage to clothes	-	2,000/-	Granted
	Total	3,68,200/-	5,53,200/-	Enhanced by Rs.1,85,000/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,68,200/- is enhanced to Rs.5,53,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are 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.29 of 2015. 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. It is made clear that the appellant is not entitled for any interest for



the delay period on the amount of Rs.1,85,000/-, enhanced by this Court as per the order of this Court dated 03.10.2019, made in C.M.P. No.10572 of 2019 in C.M.A.SR.28061 of 2019. No costs.

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Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Namakkal.

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

+2ccs to M/s.C.Thangaraju, Advocate, S.R.No.8354

C.M.A.No.3840 of 2019

BR[co]
NSK 27/10/2021