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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1797 of 2019

Rajapandian

...Appellant/Claimant

Vs.

1. Sangili

2. The New India Assurance Company Limited,
By-pass road,
Dharmapuri 636 701.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.10.2018 made in M.C.O.P.No.609 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

For Appellant : Mr.D.Ramesh Kumar

For R1 : No appearance

For R2 : Mr.S.Dhakshnamoorthy

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 24.10.2018 made in M.C.O.P.No.609 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri.

3.The appellant is the claimant in M.C.O.P.No.609 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.06.2016.



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 lorry owned by the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.79,957/- 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 suffered multiple grievous injuries all over his body. The Medical Board constituted by the Dharmapuri Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 10% partial permanent disability and issued Ex.P23/disability certificate to that effect. At the time of accident, the appellant was aged 38 years working as Tailor and also doing Contractor work and was earning a sum of Rs.25,000/- per month. Due to the injuries sustained by the appellant, he could not able to do his work as he was doing earlier. The Tribunal failed to award any amount towards loss of income. The Tribunal ought to have awarded compensation towards loss of income for six months. The amounts awarded by the Tribunal towards disability, pain and sufferings, transportation, attendant charges and extra nourishment are meagre. The Tribunal failed to award any amount towards loss of amenities andcfuture medical expenses and prayed for enhancement of compensation.

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.

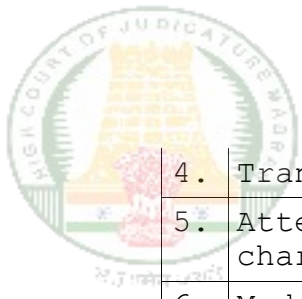
8.Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.30,000/- for 10% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not produced any document to prove that he lost his income. In view of the same, he is not entitled to any amount towards loss of income. The appellant failed to produce any materials to substantiate that he requires future medical expenses. Hence, he is not entitled for compensation towards future medical expenses. The Tribunal considering the materials placed before it, nature of injuries, treatment taken, disability awarded a sum of Rs.79,957/- as compensation under different heads for the simple injuries sustained by the appellant and the same is not meagre. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.



9. 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.

10. It is the case of the appellant that in the accident he suffered multiple grievous injuries all over his body. To prove the nature of injuries, the appellant examined himself as P.W.2. The Medical Board constituted by the Dharmapuri Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 10% partial permanent disability and issued Ex.P23/disability certificate to that effect. The Tribunal considering Ex.P23/disability certificate has awarded a sum of Rs.30,000/- for 10% disability at the rate of Rs.3,000/- per percentage of disability and the same 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 2016. 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.50,000/- (Rs.5,000/- X 10% disability). The appellant has not proved that he suffered functional disability or lost his income during treatment period by producing acceptable evidence. Hence, he is not entitled to any amount towards loss of earning capacity and loss of income. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he will not be facing discomfort in his life. Hence, the appellant is not entitled to any amount towards loss of amenities. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. 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	30,000/-	50,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Extra nourishment and damages to clothes	5,000/-	5,000/-	Confirmed



4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Attendant charges	5,000/-	5,000/-	Confirmed
6.	Medical expenses	24,957/-	24,957/-	Confirmed
	Total	Rs.79,957/-	Rs.99,957/-	Enhanced by Rs.20,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.79,957/- is hereby enhanced to Rs.99,957/- 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.609 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Dharmapuri. 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

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

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

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.16841

C.M.A.No.1797 of 2019

LN[co]
NSK 21/10/2021