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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.4464 OF 2019

Aravindhan

.. Appellant/Petitioner

Vs.

1. M.Santha
2. The New India Insurance Co.Ltd.,
Branch Office, No.39-C,
Bypass Road, Dharmapuri Town,
Dharmapuri Taluk & District, Pin-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 19.08.2017 made in M.C.O.P.No.631 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dharmapuri.

For Appellant : Mr.D.Ramesh Kumar
For R2 : Mr.K.Vinoth

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 19.08.2017 made in M.C.O.P.No.631 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Dharmapuri.

2.The appellant is the claimant in M.C.O.P.No.631 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate 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 06.07.2016.



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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,15,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

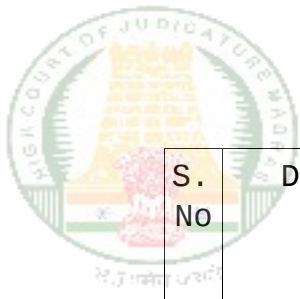
5.The learned counsel appearing for the appellant contended that in the accident the appellant suffered (i) traumatic amputation of left great toe at proximal px level, (ii) fracture and laceration over 4x0.5x0.5 cm left 2nd toe and multiple injuries all over his body. The Medical Board examined the appellant and certified that appellant suffered 10% disability and disability certificate was marked as Ex.P7. The Tribunal has awarded only a meagre sum of Rs.30,000/- towards disability, calculating at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.5,000/- per percentage of disability. The appellant has taken treatment as inpatient at Government Hospital, Dharmapuri for 7 days and thereafter taken treatment as outpatient at private hospital. The Tribunal has not awarded any amount towards attender charges and future medical expenses. The appellant was working as a coolie and was earning a sum of Rs.10,000/- per month. Due to the injuries and disability suffered by him in the accident, he could not do the work as he was doing earlier. The Tribunal has not awarded any amount towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.K.Vinoth, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Medical Board examined the appellant and certified that appellant suffered 10% disability. The Tribunal considering the disability certificate issued by Medical Board, awarded a sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,15,000/- as compensation to the appellant for the simple injuries sustained by him and the same is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that it is the contention of the appellant that in the accident he suffered (i) traumatic amputation of left great toe at proximal px level, (ii) fracture and laceration over 4x0.5x0.5 cm left 2nd toe and multiple injuries all over his body. To prove the nature of injuries and disability, the appellant was referred to the Medical Board, Dharmapuri. The Medical Board after examining the appellant, certified that appellant suffered 10% disability and the disability certificate was marked as Ex.P7. The Tribunal considering the disability certificate issued by the Dharmapuri Medical Board, awarded a sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2016 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh 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 rise 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 enhanced to Rs.50,000/- (Rs.5,000/- X 10% of disability). The appellant has taken treatment as inpatient at Government Hospital, Dharmapuri for 7 days. The Tribunal has not granted any amount towards attendant charges. Considering the nature of injuries and treatment taken, a sum of Rs.20,000/- have been granted by this Court towards attendant charges. 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 appellant has not proved that he lost his income during treatment period and that he could not do the work as he was doing earlier by producing valid documents. Hence, the appellant is not entitled to any amount towards loss of income. 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.	Disability	30,000/-	50,000/-	Enhanced
2.	Medical expenses	5,000/-	5,000/-	Confirmed
3.	Pain & sufferings	30,000/-	30,000/-	Confirmed
4.	Extra nourishment & loss of articles	25,000/-	25,000/-	Confirmed
5.	Loss of amenities	25,000/-	25,000/-	Confirmed
6.	Attendant charges	-	20,000/-	Granted
	Total	Rs.1,15,000/-	Rs.1,55,000/-	Enhanced by Rs.40,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,15,000/- is hereby enhanced to Rs.1,55,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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.631 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate 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(Lok Adalat)

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Sub Assistant Registrar

gbi



To

1. The Chief Judicial Magistrate Court,
Motor Accident Claims Tribunal,
Dharmapuri.

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

+1cc to Mr.D.Ramesh Kumar, Advocate, S.R.No.33142

+1cc to Mr.K.Vinoth, Advocate, S.R.No.33180

C.M.A.No.4464 of 2019

NRL(CO)
RLP(08/11/2021)