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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.966 of 2021

K.Vasu

... Appellant/Petitioner

Vs.

1.A.Ramamoorthy

2.ICICI Lombard General Insurance Company Limited,
Chotah Bhai Centre,
2nd Floor, #140, Nungambakkam High Road,
Chennai - 600 034. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.03.2019 made in M.C.O.P.No.3176 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For R2 : Mrs.R.Sreevidya

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 20.03.2019 made in M.C.O.P.No.3176 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3176 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.12.2014.

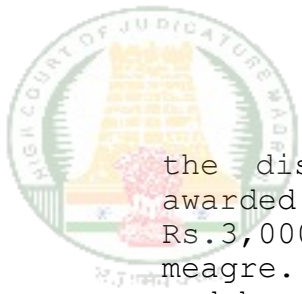


4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,19,100/- as compensation to 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 sustained fracture of 1/3rd tibia right side and he was referred to the Regional Medical Board constituted by the Government Kilpauk Medical College Hospital, Chennai. The Regional Medical Board constituted by the Government Kilpauk Medical College Hospital, Chennai examined the appellant and certified that appellant suffered 25% disability and issued disability certificate Ex.C1 to that effect. The Tribunal awarded a meagre sum of Rs.75,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2014 and the Tribunal ought to have awarded more amount towards disability. The appellant finds difficulty in performing his day-to-day activities. The Tribunal erred in granting compensation by adopting percentage method. The Tribunal taking into consideration the injuries and fracture, ought to have adopted multiplier method and awarded compensation. At the time of accident, the appellant was working as OT Technician at Apollo Cosmetic Surgical Center Private Limited, Teynampet, Chennai and was earning a sum of Rs.22,620/- per month. The Tribunal has awarded compensation towards loss of income only for two months. The Tribunal ought to have awarded compensation for loss of income for six months. The appellant produced Exs.P4/inpatient bill for a sum of Rs.1,34,120/- incurred for inpatient treatment. The Tribunal erroneously failed to award the said amount holding that the said amount can be reimbursed by personal policy taken by the appellant, which is contrary to the judgment of this Court and Hon'ble Apex Court. The Tribunal failed to award any amount towards loss of amenities and future medical expenses. The amounts awarded by the Tribunal towards loss of income, extra nourishment, pain and sufferings, attendant charges, transportation and disability are meagre. The appellant filed quotation given by the Doctor for removal of plate and the Tribunal erroneously rejected the same and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted



the disability certificate issued by the Medical Board and awarded a sum of Rs.75,000/- for 25% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation towards loss of earning capacity. In the cross examination, the appellant admitted that the amounts spent by him for medical expenses are reimbursed by personal policy taken by him. In view of the same, he is not entitled for the same. The Tribunal considering the entire materials on record, has awarded a sum of Rs.2,19,100/- as compensation to the appellant under different heads and the same is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. 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.

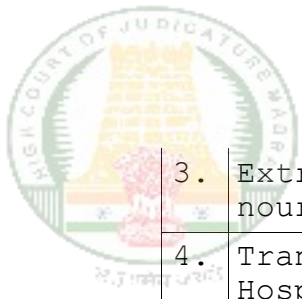
9. It is the case of the appellant that in the accident he sustained fracture of 1/3rd tibia right side and multiple injuries all over the body. According to appellant, due to the injuries and disability, he finds difficult to do his day-to-day activities. The appellant has not examined any Doctor to prove that he suffered functional disability and his income has been reduced. Hence, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have adopted multiplier method to award compensation is not acceptable. The appellant is entitled to compensation for disability only by adopting percentage method. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and was referred to the Regional Medical Board constituted by the Government Kilpauk Medical College Hospital, Chennai. The Regional Medical Board constituted by the Government Kilpauk Medical College Hospital, Chennai examined the appellant and certified that appellant suffered 25% disability and issued disability certificate Ex.C1 to that effect. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.75,000/- for 25% 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,00,000/- (Rs.4,000/- X 25% disability).



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10. It is the contention of the appellant that at the time of accident, he was working as OT Technician at Apollo Cosmetic Surgical Center Private Limited, Teynampet, Chennai and was earning a sum of Rs.22,620/- per month. To prove the avocation and income, the appellant has produced the Ex.P10/pay slip for the month of November 2014. The Tribunal considering Ex.P10, fixed a sum of Rs.21,840/- as monthly income of the appellant and awarded a sum of Rs.43,680/- towards loss of income for two months and the same is meagre. The appellant has taken treatment in the Bharathirajaa Hospital as inpatient from 09.12.2014 to 17.12.2014 for 9 days. Considering the nature of injuries, disability and period of treatment taken by the appellant, he would not have attended his work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.65,520/- (Rs.21,840/- X 3 months). Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, extra nourishment and transportation are meagre and the same are enhanced to Rs.15,000/-, Rs.20,000 & Rs.10,000/- respectively. The appellant underwent surgery and plates were implanted. He also filed quotation for removal of plates. The Tribunal erroneously rejected the same as the appellant has not filed the detailed quotation for the said surgery and not produced any document for having taken continuous treatment. Considering the nature of injuries and the fact that the appellant underwent surgery, a sum of Rs.20,000/- is granted for removal of plates. The Tribunal has not awarded any amounts towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.20,000/- towards loss of amenities. The appellant is not entitled to any amount already reimbursed by him from the medical insurance towards other expenses. Considering the nature of injuries and disability, this Court is of the considered 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
1.	Disability	75,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed



3.	Extra nourishment	15,000/-	20,000/-	Enhanced
4.	Transport to Hospital	3,000/-	10,000/-	Enhanced
5.	Attendant charges	2,250/-	15,000/-	Enhanced
6.	Future Prospects	20,000/-	20,000/-	Confirmed
7.	Loss of Income	43,680/-	65,520/-	Enhanced
8.	Medical expenses	40,169/-	40,169/-	Confirmed
9.	Loss of Amenities	-	15,000/-	Granted
10	Removal of plates	-	20,000/-	Granted
	Total	Rs.2,19,099/- rounded off to Rs.2,19,100/-	Rs.3,25,689/- rounded off to Rs.3,25,700/-	Enhanced by Rs.1,06,600/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,19,100/- is hereby enhanced to Rs.3,25,700/- 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.3176 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. 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/-
Assistant Registrar

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Sub Assistant Registrar



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To

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1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+2ccs to Mr.A.N.Viswanatha Rao, Advocate Sr.20046
+1cc to Mrs.P.Srividya, Advocate Sr.20695

C.M.A.No.966 of 2021

vbm[co]
srg 27/10/2021