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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.910 of 2018

P.Munusamy

... Appellant /Petitioner

Vs.

1.R.Ganesan

(1st respondent set ex-parte before Tribunal)

2.The New India Assurance Co.Ltd.,

No.80, Arcot Road, Porur,

Chennai-116.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.12.2008 made in M.C.O.P.No.391 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee.

For Appellant : M/s.Ramya

For R2 : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 26.12.2008 made in M.C.O.P.No.391 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee.

2.The appellant is the claimant in M.C.O.P.No.391 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee. He filed the above claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.03.2006.



3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the share auto belonging to the 1st respondent herein and directed the 2nd respondent-Insurance Company, being insurer of the share auto to pay a sum of Rs.65,000/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that in the accident the appellant sustained fracture of 2nd, 3rd, 4th and 5th metatarsal bones of left leg and other serious multiple injuries all over the body. The P.W.2/Doctor Sai Chandran examined the appellant and certified that appellant suffered 35% disability and disability certificate was marked as Ex.P6. The Tribunal has awarded only a meagre sum of Rs.35,000/- towards disability, calculating at the rate of Rs.1,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.1,500/- per percentage of disability. The appellant has taken treatment as inpatient at G.S Hospital, Chennai for 2 days and thereafter taken treatment as outpatient at private hospital. The appellant was working as Sand, Gravel and Bricks supplier and was earning a sum of Rs.9,000/- 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.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the P.W.2/Doctor examined the appellant and certified that appellant suffered 35% disability. The Tribunal considering the disability certificate issued by Doctor, awarded a sum of Rs.35,000/- towards disability at the rate of Rs.1,000/- per percentage of disability and the same is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.65,000/- 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 the 2nd



respondent/Insurance Company and perused the materials available on record.

8. From the materials available on record, it is seen that according to the appellant, he was aged 50 years and was working as Sand, Gravel and Bricks supplier and was earning a sum of Rs.9,000/- per month, but the appellant has not proved his avocation and income by producing any document. Hence, the Tribunal has not awarded any amount towards loss of income. However, considering the fact that the accident is of the year 2006 and a sum of Rs.4,000/- is fixed as monthly income of the appellant and due to the injury, the appellant would not have certainly attended his work in respect of supply of sand and bricks atleast for a period of three months. Therefore, the appellant is entitled to a sum of Rs.12,000/- (Rs.4,000/- X 3) towards loss of income for three months. The appellant examined Dr.Sai Chandran as P.W.2, who assessed the disability of the appellant at 35% and Ex.P6/disability certificate was marked to prove the same. Considering the P.W.2/Doctor and Ex.P6, the Tribunal accepted the same and awarded Rs.35,000/- by taking Rs.1,000/- per percentage of disability which is correct. The amount awarded by the Tribunal towards pain and sufferings is meagre and the same is hereby enhanced to Rs.25,000/-. The amounts awarded by the Tribunal under all the other heads are just and reasonable and 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.	Pain & sufferings	15,000/-	25,000/-	Enhanced
2.	Mental agony	10,000/-	10,000/-	Confirmed
3.	Medical expenses	3,000/-	3,000/-	Confirmed
4.	Transportation	1,000/-	1,000/-	Confirmed
5.	Extra nourishment	1,000/-	1,000/-	Confirmed
6.	Disability	35,000/-	35,000/-	Confirmed
7.	Loss of income	-	12,000/-	Granted
	Total	Rs.65,000/-	Rs.87,000/-	enhanced by Rs.22,000/-



9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,000/- is hereby enhanced to Rs.87,000/- 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 enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.391 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court II, Poonamallee. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing separate petition before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gbi
To

The Additional District and Sessions Judge,
Fast Track Court II,
Motor Accident Claims Tribunal,
Poonamallee.

+1cc to M/s.J.Chandran, Advocate Sr.64017

C.M.A.No.910 of 2018

cp[co]
srg 25/01/2022