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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1212 of 2021

Gangan .. Appellant/ Petitioner

Vs.

1.M.Parthiban

2.The New India Assurance Company Limited,
Divisional Office,
C.S.I. Building,
No.1, Officer's Line,
Vellore.

.. Respondents/ Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.01.2021 made in M.C.O.P. No.73 of 2019, on the file of the II Additional District Court, (Motor Accidents Claims Tribunal), Ranipet, Vellore District.

For Appellant : Mr.M.Sivakumar
for Mr.C.Prabakaran

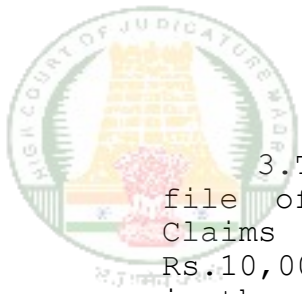
For Respondents : Mrs.R.Sreevidhya (For R2)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 05.01.2021 made in M.C.O.P. No.73 of 2019, on the file of the II Additional District Court, (Motor Accidents Claims Tribunal), Ranipet, Vellore District.

2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.



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3.The appellant/claimant filed M.C.O.P.No.73 of 2019, on the file of the II Additional District Court, (Motor Accidents Claims Tribunal), Ranipet, Vellore District, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 03.02.2019.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by rider of the Motorcycle owned by the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.2,60,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 05.01.2021 made in M.C.O.P. No.73 of 2019, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained fracture of right hip bone. The Medical Board certified that the appellant suffered 50% disability. The Tribunal has awarded only a meagre sum of Rs.1,50,000/- towards permanent disability. At the time of accident, he was doing Milk Business and was earning a sum of Rs.20,000/- per month. Due to the injuries sustained in the accident, he could not continue his work as he was doing earlier and lost his earning power. The Tribunal failed to award any amount towards loss of income during treatment period. The amounts awarded by the Tribunal towards pain and sufferings and extra nourishment are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that considering the nature of injuries suffered and period of treatment taken by the appellant, the Tribunal has awarded compensation under different heads, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9.It is the case of the appellant that in the accident, he suffered grievous injuries and fractures and has taken treatment as in-patient at Government Hospital, Walajah from 03.02.2019 to 13.02.2019, for a period of 11 days. He has marked Ex.P2-discharge summary to prove the same. The appellant was referred



to the Medical Board, Government Medical College Hospital, Vellore. The Medical Board examined the appellant and certified that the appellant suffered 50% disability. The Tribunal awarded a sum of Rs.1,50,000/- towards disability at the rate of Rs.3,000/- per percentage for 50% disability. 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 2019. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.2,50,000/- (Rs.5,000/- x 50%), at the rate of Rs.5,000/- per percentage for 50% disability. The appellant has not proved that due to the injuries sustained in the accident, he lost income. Hence, the Tribunal rightly did not award any amount towards loss of earning during treatment period. 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.	Loss of amenities and future medical expenses	50,000/-	50,000/-	Confirmed
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Pain and sufferings	30,000/-	30,000/-	Confirmed
4.	Extra nourishment	15,000/-	15,000/-	Confirmed
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Partial permanent disability	1,50,000/-	2,50,000/-	Enhanced



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Total	2,60,000/-	3,60,000/-	Enhanced by Rs.1,00,0 00/-
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10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,60,000/- is enhanced to Rs.3,60,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is 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.73 of 2019. 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. No costs.

Sd/-

Deputy Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The II Additional District Judge,
(Motor Accidents Claims Tribunal),
Ranipet, Vellore District.

+1 cc to Mrs.R.Sreevidhya., Advocate Sr.NO.21612

+1 cc to Mr.M.Sivakumar , Advocate Sr.NO. 21244

C.M.A.No.1212 of 2021

vsn ii(CO)

A.SK(28.10.2021)