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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO.2130 OF 2018

A.Praveenkumar

.. Appellant/Petitioner

Versus

1.P.Janaki

2.HDFC ERGO General Insurance Company Limited,
No.559, Anna Salai, Teynampet,
Chennai-600 018.

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 02.04.2018 made in M.C.O.P. No. 5870 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No. II), Small Causes Court, Chennai.

For Appellant : Mr.K.VaradhaKamaraj

For R2 : Mr.K.Poomalai

For R1 : Set exparte before Tribunal

JUDGMENT

S. KANNAMMAL, J

This civil miscellaneous appeal has been filed by the appellant/claimant for enhancement of compensation awarded by the Motor Accident Claims Tribunal, (Special Sub Court No. II), Small Causes Court, Chennai, in M.C.O.P. No. 5870 of 2013 dated 02.04.2018.

2. As per the averments in the claim petition filed before the Tribunal, on 07.05.2013 at about 16.30 hrs while the petitioner was proceeding in his motorcycle bearing registration number TN 31 AT 8455 on the Manjakollai Main Road, Marudur, a Tractor bearing registration number TN-31 AR 3889 came in a rash



and negligent manner in the opposite direction and dashed against the petitioner's vehicle. In the accident, the petitioner sustained multiple fractures. The petitioner was a IIIrd year B.E. Student. He could not attend the annual examination due to the injuries sustained in the accident. He therefore filed the claim petition in M.C.O.P No. 5870 of 2013 against the respondents claiming a sum of Rs. 40,00,000/- (Rs.40 Lakhs) as compensation.

3. Before the Tribunal, the first respondent/owner of the tractor remained ex-parte. The claim petition was contested only by the second respondent/Insurance Company.

4. The second respondent/Insurance Company filed a counter statement denying the averments made by the claimant in the claim petition. The Insurance Company also specifically denied the educational qualification and other particulars furnished by the claimant. It also objected to the amounts claimed by the claimant under various heads as exorbitant and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the averments in the claim petition, the claimant examined himself as PW1, one Doctor K.J.Mathiazhagan was examined as P.W.2 and 24 documents were marked viz., Ex.P.1 to P.24. On behalf of the respondents in the claim petition, neither any witness was examined nor any document was marked.

6. On appreciation of the oral and documentary evidence produced on the side of the claimant, the tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the driver of the tractor owned by the first respondent. By arriving at such a conclusion the tribunal awarded a sum of Rs.13,73,700/- as compensation for the injuries sustained by the claimant and directed the second respondent/insurance company to pay the said compensation amount.

7. As against the award passed by the Tribunal, the present appeal has been filed by the claimant for enhancement of compensation.

8. The learned counsel for the appellant/claimant submitted that the sum of Rs.13,73,700/- awarded by the Tribunal in total as compensation as against the total claim of Rs. 40,00,000/- (Rs.40 Lakhs) claimed by the claimant is an inadequate compensation. It is submitted that the Tribunal ought to have



fixed the disability as 70% as assessed by the doctor who was examined as P.W.2. It is further submitted that the Tribunal ought to have fixed 100% as loss of earning power for the appellant and the Tribunal went wrong in fixing the monthly income as Rs.9,000/- per month. The learned counsel for the appellant would submit that the award passed by the Tribunal under the heads of Attending Charges, Transport, Extra Nourishment, Pain and Suffering and Loss of Amenities are very meager which needs the interference of this Court.

9. The learned counsel appearing for the 2nd respondent/Insurance Company submitted that the award of compensation granted under various heads to the appellant/claimant is perfectly in order and needs no interference.

10. We have heard the counsel for both sides and perused the materials placed on record. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation under various heads as under.

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Loss of earning Power	Rs.8,16,480/-
2	Permanent Disability	Rs.1,80,000/-
3	Pain and Sufferings	Rs.60,000/-
4	Transportation	Rs. 8,000/-
5	Extra-Nourishment	Rs. 25,000/-
6	Damage to Clothes	Rs.5,000/-
7	Medical Expenses	Rs.1,39,129.50 ps/-
8	Attending Charges	Rs.50,000/-
9	Loss of Amenities	Rs.60,000/-
10	Mental Agony to family	Rs.30,000/-
	Total	Rs.13,73,609.50/-

11. The claimant was an Engineering student at the time of accident. In the accident, the claimant sustained fracture in Shaft Femur right, open segmental tibia and fibula fracture right, Radial styloid right and open wound right foot. P.W.2/ the doctor, who examined the claimant issued disability certificate as 70% as partial and permanent disability. The Tribunal reduced the percentage of disability from 70% to 60% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P22/disability certificate. Considering the nature of injuries sustained by the claimant we are of the view that 70% disability as given by the doctor can be taken as such. The accident is of the year 2013 and the Tribunal has awarded a sum



of Rs.3,000/- per percentage of disability and the same is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.2,10,000/- (Rs.3,000/- X 70% of disability). From the award passed by the Tribunal it is seen that appellant has taken treatment as inpatient at Sri Ramachandra hospital for 4 different spells (from 08.05.2013 to 12.08.2013, from 03.09.2013 to 13.09.2013, from 29.04.2014 to 06.05.2014 and from 06.01.2015 to 12.01.2015). Considering the nature of injuries and period of treatment taken by the appellant, this Court is of the view that the amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment, damage to clothes and attending charges are very meager and hence, the same needs enhancement. The modified amounts of compensation is tabulated infra. However, the amounts awarded by the Tribunal towards loss of earning power, medical expenses, loss of amenities, mental agony to family are confirmed.

Sl .N o	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)	Award confirmed or enhanced or granted
1	Loss of earning Power	Rs.8,16,480/-	8,16,480/-	confirmed
2	Permanent Disability	Rs.1,80,000/-	Rs.2,10,000/-	enhanced
3	Pain and Sufferings	Rs.60,000/-	Rs.75,000/-	enhanced
4	Transportation	Rs. 8,000/-	Rs. 12,000/-	enhanced
5	Extra- Nourishment	Rs. 25,000/-	Rs. 50,000/-	enhanced
6	Damage to Clothes	Rs.5,000/-	Rs.6,000/-	enhanced
7	Medical Expenses	Rs.1,39,129.50ps/-	Rs.1,39,129.50ps/-	confirmed
8	Attending Charges	Rs.50,000/-	Rs.75,000/-	enhanced
9	Loss of Amenities	Rs.60,000/-	Rs.60,000/-	confirmed
10	Mental Agony to family	Rs.30,000/-	Rs.30,000/-	confirmed
	Total	Rs.13,73,609.50/- rounded off to Rs.13,73,700/-	Rs.14,73,609.5/- rounded off to Rs.14,73,700/-	Enhanced by Rs.1,00,0 00/-



12. In the result, Civil Miscellaneous Appeal is partly allowed. No costs. The second 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. 5870 of 2013. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Motor Accident Claims Tribunal,
(Special Sub Court No.II),
Small Causes Court, Chennai
2. The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.K.VaradhaKamaraj, Advocate, S.R.No.28106

CMA.No.2130 of 2018

PP(CO)
CS/22/11/2021