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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.521 of 2018
[video conferencing]

Balaji ... Appellant / Petitioner

Vs.

1.Venkatesan

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.The New Assurance Company Ltd.,
Third Party Motor Claims Office at
No.45, Moore Street,
Chennai - 600001.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.08.2016 made in M.A.T.C.O.P.No.318 of 2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant : Mr.M.Malar

For R1 : Ex-parte

For R2 : D.Nadhamuni

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.318 of 2013 dated 26.08.2016 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Ponneri.

2.The appellant is the claimant in M.C.O.P.No.318 of 2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri. 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 14.03.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Innova Car owned by 1st respondent and directed the 2nd respondent to pay a sum of Rs.4,05,800/- 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/claimant contended that in the accident the appellant sustained grievous injuries all over his body. P.W.2/Doctor assessed the appellant and certified that appellant suffered 70% disability and issued Ex.P11/disability certificate to that effect. Considering the nature of injuries suffered by the appellant the Tribunal fixed the percentage of disability from 70% to 45% and awarded compensation only for 45% disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded compensation for 70% disability. Thus, a sum of Rs.1,35,000/- [Rs.3,000/- X 45% disability] awarded by the Tribunal as permanent disability. At the time of accident, the appellant was aged about 45 years doing Prohidam and was earning a sum of Rs.25,000/- per month. The Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for two month is meager. Due to the injuries and fractures suffered by the appellant, he sustained 100% loss of earning power and the Tribunal ought to have awarded compensation for 100% loss of earning capacity. The appellant has taken treatment as inpatient at Venkateswara Hospital, Chennai for 13 days from 14.03.2013 to 26.03.2013 and then for 2 days from 03.08.2015 to 04.08.2015 and also undergone two surgeries. The Tribunal failed to award any amount towards loss of amenities and attendant charges. The amounts awarded by the Tribunal towards extra nourishment, permanent disability, transport expenses, medical expenses, loss of income and pain and sufferings are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 70% to 45% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and also he has given Ex.P11/disability certificate long after the



date of accident and hence, the appellant is not entitled to compensation for 70% disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant has not suffered any functional disability and hence, he is not entitled to any compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. 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 / Insurance Company and perused the entire materials placed on record.

8. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained grievous injuries all over his body. P.W.2/Doctor assessed the appellant and certified that the appellant suffered 70% disability and issued Ex.P11/disability certificate to that effect. The Tribunal reduced the percentage of disability from 70% to 45% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and he has given disability certificate long after the date of accident. The Tribunal has given valid reason for reducing the percentage of disability from 70% to 45% and hence, the appellant is not entitled to compensation for 70% disability. The accident is of the year 2013 and the Tribunal has awarded a sum of Rs.1,35,000/- for disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method.

9. It is the contention of the appellant that at the time of accident, he was Prohidam and was earning a sum of Rs.25,000/- per month. The appellant has not produced any documentary evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed the notional income of the appellant at Rs.5,000/- per month and the same is not meagre. Considering the nature of injuries and disability, the appellant would not have attended his work atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is



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enhanced to Rs.20,000/- [Rs.5,000 X 4 months]. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards pain and sufferings is meagre and hence, the same is enhanced to Rs.30,000/-. The appellant has taken treatment as inpatient at Venkateswara Hospital, Chennai for 13 days from 14.03.2013 to 26.03.2013 and then for 2 days from 03.08.2015 to 04.08.2015 totally 15 days and also underwent two surgeries. The Tribunal has not awarded any amount towards attendant charges. Therefore, the appellant is entitled to a sum of Rs.5,000/- towards attendant charges. Due to injuries and disability suffered by the appellant, he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.10,000/- towards loss of amenities. Considering the nature of injuries and percentage of 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:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Pain and Sufferings	Rs.20,000/-	Rs.30,000/-	Enhanced
2	Loss of Income	Rs.10,000/-	Rs.20,000/-	Enhanced
3	Medical expenses	Rs.2,25,800/-	Rs.2,25,800/-	Confirmed
4	Rich and Nutritious Food	Rs.5,000/-	Rs.5,000/-	Confirmed
5	Transport Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
6	Permanent Disability	Rs.1,35,000/-	Rs.1,35,000/-	Confirmed
7	Loss of amenities	---	Rs.10,000/-	Granted
8	Attendant Charges	---	Rs.5,000/-	Granted
	Total	Rs.4,05,800/-	Rs.4,40,800/-	Enhanced by Rs.35,000/-

10. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation awarded by the Tribunal at Rs.4,05,800/- is hereby enhanced to Rs.4,40,800/- together with interest at the rate of 7.5% per annum from the date of filing



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.318 of 2013, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri. 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. It is made clear that the appellant is not entitled to any interest for the delay period as per the order of this Court dated 27.02.2018 made in C.M.P.No.9100 of 2017 in C.M.A.SR.No.41081 of 2017. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ssi
To:

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Ponneri.

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

+1cc to Mr.D.Nadhamuni, Advocate Sr.62813
+1cc to M/s.M.Malar, Advocate Sr.62483

C.M.A.No.521 of 2018

svi[col]
srg 28/12/2021