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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.926 of 2018

S.Allimuthu

(Rep. By his wife Mohana as
natural guardian)

...Appellant / Petitioner

..Vs..

1.J.A.K. Industries,
No.28/A, New Street,
Arjuna Nagar, Cholapuram road,
Thirumullaivoyal, Chennai - 62.

2.Future General India Insurance Co.Ltd.,
Karumuttu Nilayam, 1st Floor, North wing,
192, Anna Salai, Chennai - 600 002.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.12.2017 made in M.C.O.P.No.3578 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : M/S.Ramya V. Rao

For Respondents : Mr.M.B.Raghavan (R2)
Refused (R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Award dated 07.12.2017 made in M.C.O.P.No. 3578 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.



2.The Appellant is the Claimant in M.C.O.P.No.3578 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation on account of the injuries sustained by him in an accident that took place on 17.03.2012.

3.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 Car bearing Registration No.TN-20-BL-8561 and directed the respondents 1 and 2 to pay a sum of Rs.8,84,000/- 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 contended that though the Tribunal rightly fixed negligence on the driver of the car driver failed to award adequate compensation for the grievous injury sustained by him. It is the further contention of the learned counsel for the Appellant that the Appellant had sustained Head injury with LOC, right side hemiplegia with hypotonic, Left fronto temporal contusion, Parieto-occipital ICH/SDH, Acute SDH in FTP region. It is further stated that though the Doctor assessed 90% disability, the Tribunal went wrong in fixing the disability at 75% .

6. It is the further contention of the learned counsel for the Appellant that the accident took place on 17.03.2012 and the income of the painter in 2012 will not be less than Rs.500/- per day, the Tribunal went wrong in fixing notional income at Rs.6,000/- which is very low. He further submitted that that the compensation awarded towards Attender charges is very low. He further submitted that compensation awarded towards other heads are also very low and the same needs to be enhanced.

7. The learned counsel appearing for the 2nd respondent- Insurance Company submitted that the Claims Tribunal on considering both oral and documentary evidence has rightly awarded compensation and the same need not be interfered with.



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.

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9. Admittedly the date of accident and the injury is not dispute. It appears that functional disability. The Workman Compensation's Act, 1923, has been amended on 2010 and as per the said amendment this Court finds that for calculation of monthly income, ceiling has been increased to Rs.8,000/-, if the wage is over and above Rs.8,000/- per month. Hence, monthly income is fixed at Rs.8,000/- per month, in the absence of proof of income or even assuming that the income is taken as it is, as contented by the injured.

10. Considering the grievous injuries sustained by the claimant and the impact of the said injuries and as per the Judgment of Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TANMAC 609 (SC), this Court deems it appropriate to award 40% towards future prospects. Accordingly 40% is awarded towards future prospects. Hence, Loss of the Earning capacity of the Appellant is enhanced from Rs. 8,10,000/- to Rs.15,12,000/- (Rs.8000 + 3,200*12*15*75%) .

11. Considering the fact that due to the injuries sustained by the Appellant in the accident, he is not able to work as before and has to seek help from others, the compensation towards Attender charges is enhanced from Rs.2,000/- to Rs.50,000/- .

12. Taking into account, the nature of injuries and the period of treatment undergone by the Appellant, this Court feels that the compensation awarded towards Pain and Sufferings, Extranourishment and Transport to Hospital are very meager and there the same is enhanced to Rs.50,000/-, Rs. 25,000/-, and Rs.25,000/- respectively .

13. On scrutinizing the fact that the Appellant due to the accident had got paralysis on account of head injury and as he is a married person, this Court is of the view that some compensation can be awarded towards Loss of Amenities. Accordingly, a sum of Rs.50,000/- is awarded towards Loss of Amenities.

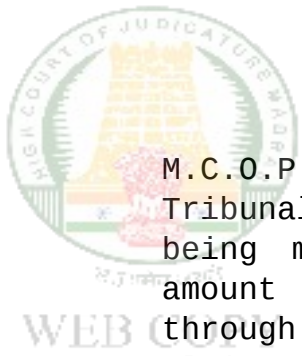


14. As far as fixation of disability is concerned, though P.W.4 – Doctor assessed the disability @ 90%, the Claims Tribunal by following the manual for Doctor to evaluate permanent physical impairment for orthopedic surgeons, page 17 and 18, prepared by American Academy of orthopedic surgeons, the percentage of disability to the injured was fixed @75%, which is not meagre and the same does not warrant interference.

15. In fine, 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.	Medical bills	24,660/-	24,660/-	Confirmed
2.	Disability & Earning capacity	8,10,000/-	15,12,000/-	Enhanced
3.	Attender charges	2,000/-	50,000/-	Enhanced
4.	Loss of income	12,000/-	12,000/-	Confirmed
5.	Pain and suffering	25,000/-	50,000/-	Enhanced
6.	Transport to Hospital	5,000/-	25,000/-	Enhanced
7.	Extra Nourishment	5,000/-	25,000/-	Enhanced
8.	Loss of Amenities	NIL	50,000/-	Enhanced
	Total	Rs.8,83,660/-	Rs.17,48,660/-	Enhanced by Rs.8,64,660/-
	Rounded off	Rs.8,84,000/-		Rs.8,65,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,84,000/- is hereby enhanced to Rs.17,48,660/- together with interest at the rate of 9% per annum from the date of petition till the date of realization. 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 eight weeks from the date of receipt of a copy of this judgment to the credit of



M.C.O.P.No.3578 of 2012 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks. The appellant / claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

arr/shk

To

1.The II Judge,
The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+2ccs to M/s.Ramya V. Raw, Advocate SR.No.39906

C.M.A.No.926 of 2018

SSD(CO)
RVM(11/11/2021)