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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2521 of 2019

M.Ramesh

... Appellant/Petitioner

Vs.

1.B.Padmanaban

2.ICICI Lombard General Insurance Company Limited,

"Chottabhai Centre", 2nd and 3rd Floors,

No.140, Nungambakkam High Road,

Chennai - 600 034.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.03.2017 made in M.C.O.P.No.4424 of 2012 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R1 : No appearance

For R2 : Mr.K.Poomalai

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 15.03.2017 made in M.C.O.P.No.4424 of 2012 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.4424 of 2012 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.08.2012.



4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,55,307/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant sustained grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P6/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 30% and awarded compensation only for 30% disability. The Tribunal ought to have awarded compensation for 45% disability. The appellant was working as Two Wheeler Mechanic and was earning a sum of Rs.500/- per day and the compensation awarded by the Tribunal towards loss of income is meagre. The appellant has taken treatment in the Government General Hospital, Chennai as inpatient from 13.08.2012 to 25.08.2012 and the compensation awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and attendant charges are meagre. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses and prayed for enhancement of compensation.

7.The learned counsel appearing for the 2nd respondent contended that P.W.2/Doctor is not the doctor who treated the appellant and deposed that percentage of disability may vary from Doctor to Doctor upto 5%. The Tribunal considering the evidence of P.W.2/Doctor and reduced the percentage of disability from 45% to 30%. 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, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income for 73 days, which is excessive. 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.

8.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

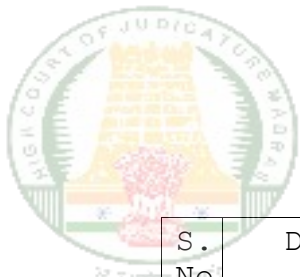


9. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

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10. From the materials available on record, it is seen that it is the contention of the appellant that in the accident he sustained grievous injuries all over the body. To prove the same, the appellant examined himself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 45% disability and issued Ex.P6/disability certificate to that effect. The Tribunal reduced the percentage of disability from 45% to 30% on the ground that P.W.2/Doctor is not the doctor who treated the appellant and also considering the evidence of P.W.2/Doctor that percentage of disability may vary from Doctor to Doctor upto 5%. The reason given by the Tribunal is not correct. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P6/disability certificate. Hence, the appellant is entitled to compensation for 45% disability. 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.1,35,000/- (Rs.3,000/- X 45% of disability).

11. It is the contention of the appellant that he was working as Two Wheeler Mechanic and was earning a sum of Rs.500/- per day. He has not filed any document to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income for 73 days and the same is meagre. The accident occurred in the year 2012 and a sum of Rs.9,000/- per month is fixed as notional income of the appellant. Due to the 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 modified to Rs.36,000/- (Rs.9,000/- X 4 months). The appellant has taken treatment in the Government General Hospital, Chennai as inpatient from 13.08.2012 to 25.08.2012. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment and damages to clothes are enhanced to Rs.10,000/-, Rs.7,500/-, Rs.10,000/- and Rs.2,000/- respectively as the amounts granted by the Tribunal are meagre. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	90,000/-	1,35,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Loss of income	18,250/-	36,000/-	Enhanced
4.	Medical expenses	5,307/-	5,307/-	Confirmed
5.	Attendant charges	3,250/-	10,000/-	Enhanced
6.	Transportation	2,500/-	7,500/-	Enhanced
7.	Damages to clothes	1,000/-	2,000/-	Enhanced
8.	Extra nourishment	5,000/-	10,000/-	Enhanced
9.	Mental agony	5,000/-	5,000/-	Confirmed
	Total	Rs.1,55,307/-	Rs.2,35,807/-	Enhanced by Rs.80,500/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,55,307/- is hereby enhanced to Rs.2,35,807/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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.4424 of 2012 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai, at the first instance and recover the same from the 1st respondent. 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. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar



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To

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

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

+1cc to M/s.K.Varadhakamaraj, Advocate Sr.241
+1cc to M/s.K.Poomalai, Advocate Sr.220

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vsn II[co]
srg 26/08/2021