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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2525 of 2019

M.Arumugam,
S/o.Mannara
Gounder

...Appellant/Petitioner

Vs.

1.J.Selvaraj
2. New India Assurance Co.Ltd.,
Motor Third Party Hub,
Silingi Building,
No.45, Moore Street,
Chennai -600 001.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.03.2019 in M.C.O.P.No.5897 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents:

For R1 : Not ready in notice

For R2 : Mr.K.Vinod for Mr.Elveera Ravindran

JUDGMENT

With consent of both the learned counsel for the appellant and the 2nd respondent, this Civil Miscellaneous Appeal is taken up for final disposal.

2. The claimant is the appellant and is aggrieved by the impugned Judgment and Decree dated 01.03.2019 passed by the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai in M.C.O.P.No.5897 of 2014.

3. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.3,49,560/- as compensation under various heads after deducting 10% towards contributory negligence of the appellant/claimant.



4. The appellant/claimant has filed this appeal seeking for enhancement of compensation on the ground that the Tribunal has erred in deducting 10% towards contributory negligence of the appellant/claimant merely on the ground that the appellant/claimant was not in possession of valid driving license.

5. The learned counsel for the appellant submits that the Tribunal has awarded meagre amounts towards disability inasmuch as the appellant/claimant had comminuted fracture shaft of right femur and was hospitalized for about 17 days.

6. It is further submitted that the Tribunal has considered disproportionately low income of Rs.7,000/- to award a sum of Rs.41,000/- towards loss of earning and loss of future prospects at Rs.21,000/- and Rs.20,000/-. He therefore prays for enhancement of compensation.

7. Defending the impugned Judgment and decree, the learned counsel for the 2nd respondent/Insurance Company submits that the impugned award of the Tribunal is well-reasoned and requires no interference. He further submits that the Tribunal has awarded a just compensation for the injuries suffered by the appellant/claimant which requires no enhancement and therefore prays for dismissal of the appeal.

8. Heard the learned counsel for the appellant and the 2nd respondent.

9. There is no dispute regarding the nature of injuries sustained and the number of days of hospitalization of the appellant/claimant.

10. The Tribunal has, by and large, awarded a just compensation on various heads. However, the Tribunal ought to have awarded a sum of Rs.1,50,000/- towards injury which has been categorized as 'disability'. Though it was temporary disability, it was nevertheless a disability with severe injury to the body.

11. The Tribunal has awarded only Rs.5,000/- towards transportation. It is now enhanced by another sum of Rs.2,500/-. The Tribunal has awarded a sum of Rs.4,250/- towards attender charges at the rate of Rs.250/- per day for 17days. It is increased to Rs.500/- per day. Therefore, there shall be further enhancement of Rs.4,250/- towards attendant charges.



12. The Tribunal has awarded a sum of Rs.41,000/- towards loss of earning and loss of future prospects at Rs.7,000/- per month. Considering the time of accident, the compensation towards loss of earning and the future prospects is taken together as loss of earning during the period.

13. The appellant/claimant would have been recuperating from the injuries suffered due to the fracture of right femur bone and the same is compensated at Rs.12,500/- per month. Thus, for six months, a sum of Rs.75,000/- is hereby awarded towards loss of earnings and future prospects.

14. The deduction of 10% towards contributory negligence merely because the appellant did not possess a valid driving licence cannot be sustained unless it was proved that the appellant/claimant was a novice and he did not know how to drive the vehicle.

15. In the result, there shall be enhancement of Rs.34,000/- against loss of earnings and future prospects. The compensation awarded by the Tribunal under other heads of compensation are just and reasonable, and therefore they are confirmed.

16. Accordingly, the compensation payable is recomputed as follows:-

Heads and calculation	Amount
Disability	Rs. 1,20,000/-
Pain & sufferings	Rs. 25,000/-
Transportation Charges	Rs. 7,500/-
Medical Expenses	Rs. 2,08,119/-
Extra Nourishment	Rs. 15,000/-
Attender Charges	Rs. 8,500/-
Loss of Earnings and Future Prospects	Rs. 75,000/-
Total	Rs.4,59,119/- Rounded off to Rs.4,59,200/-



17. The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.4,59,200/- after deducting amount already deposited by it together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgment.

18. On such deposit being made by the 2nd respondent/Insurance Company, the appellant/claimant is permitted to withdraw his respective share in the same proportion as was ordered by the Tribunal, together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

19. This Civil Miscellaneous Appeal is partly allowed with the above observations and directions. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.
2. The Section Officer,
Vernacular Section,
Madras High Court.

+1 CC to Mrs.Elveera Ravindran, Advocate sr 26044.

C.M.A.No.2525 of 2019

RLD(CO)
SP(19/11/2021)