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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2550 of 2019

Senthil Kumar

.. Claimant/Appellant

Vs.

1.Jothivel

(The 1st respondent is the owner of the vehicle but remained ex-parte before the Tribunal and no liability fixed. Hence, notice may be dispensed with)

2.United India Insurance Company Ltd.,

by its Divisional Manager,

No.50-A, Pallivasal Street, Perambalur. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2019 made in M.C.O.P.No.439 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant	:	Mr.S.Kamadevan
For R2	:	Mr.M.J.Vijaya Raghavan
R1	:	Ex-parte

JUDGMENT

(The Case has been heard through Video Conference)

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 14.03.2019 made in M.C.O.P.No.439 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

2.The appellant is claimant in M.C.O.P.No.439 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.11.2015.



3.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 Motor Cycle belonging to 1st respondent and directed the 2nd respondent/Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.13,94,800/- 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 contended that in the accident, the appellant has sustained fracture in left temporal bone with hematoma in left temporo parietal region and haemorrhagic contusions in right temporal and cerebellar region. The Medical Board constituted in the Government Hospital, Perambalur, certified that the appellant suffered 80% permanent disability and issued Ex.C1/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 50% and awarded compensation only for 50% disability. The appellant has taken treatment at Kauvery Hospital, Trichy as in-patient from 10.11.2015 to 02.12.2015, from 06.12.2015 to 17.12.2015, from 18.01.2016 to 20.01.2016, from 26.02.2016 to 29.02.2016 and from 26.05.2016 to 29.05.2016 for more than 46 days and thereafter took treatment as outpatient. The appellant was the HITTACHI JCB Operator and was earning a sum of Rs.25,500/- per month at the time of accident and produced Ex.P11/salary certificate in support of the said contention. Due to the injuries sustained by him in the accident, he could not continue the work as he was doing earlier. But, the Tribunal has fixed only a meagre sum of Rs.6,000/- as monthly income of the appellant while awarding compensation towards disability by adopting multiplier method. The Tribunal ought to have fixed a sum of Rs.12,000/- as monthly income of the appellant and awarded more compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.M.J.Vijaya Raghavan, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal at Rs.6,000/- is on the higher side and the compensation awarded by the Tribunal towards disability by adopting multiplier method is excessive. 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 all the materials available on record.

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8. From the materials available on record, it is seen that in the accident, the appellant sustained fracture in left temporal bone with hematoma in left temporo parietal region and haemorrhagic contusions in right temporal and cerebellar region. The appellant has taken treatment at Kauvery Hospital, Trichy as in-patient from 10.11.2015 to 02.12.2015, from 06.12.2015 to 17.12.2015, from 18.01.2016 to 20.01.2016, from 26.02.2016 to 29.02.2016 and from 26.05.2016 to 29.05.2016 and thereafter took treatment as outpatient. The Medical Board constituted in the Government Hospital, Perambalur, certified that the appellant suffered 80% permanent disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering the evidence of Ex.C1/disability certificate and nature of injuries, fixed disability suffered by the appellant at 50% for the whole body and awarded compensation towards 50% disability by adopting multiplier method. The reason given by the Tribunal for fixing disability of the appellant at 50% for whole body is proper.

9. It is the contention of the appellant that he was the HITTACHI JCB Operator and was earning a sum of Rs.25,500/- per month. To prove the same, the appellant produced Ex.P11/Salary certificate in support of the said contention. But, he has not examined anybody in connection with the Ex.P11/salary certificate and no other document is produced. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant and granted 40% enhancement towards future prospects. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. The appellant was aged 21 years at the time of accident. The Tribunal applied correct multiplier '17'. Thus, the amount awarded by the Tribunal towards disability is modified to Rs.17,13,600/- {[Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 17 x 50/100}. The Tribunal considering the evidence of the Medical Board and nature of injuries sustained by the appellant, has awarded amounts under different heads, which are just and reasonable and hence, the same are hereby confirmed. Thus, 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.	Disability	8,56,800/-	17,13,600/-	Enhanced
2.	Medical expenses	4,24,000/-	4,24,000/-	Confirmed
3.	Loss of income	24,000/-	24,000/-	Confirmed
4.	Transportation	20,000/-	20,000/-	Confirmed
5.	Pain & sufferings	40,000/-	40,000/-	Confirmed
6.	Extra nourishment	10,000/-	10,000/-	Confirmed
7.	Attendant charges	20,000/-	20,000/-	Confirmed
	Total	13,94,800/-	22,51,600/-	Enhanced by Rs.8,56,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,94,800/- is hereby enhanced to Rs.22,51,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.439 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gbi

To



1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Perambalur.

2.The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.No.2550 of 2019

RP (CO)
PR (21/10/2021)