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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1643 of 2020

Tamilmaran

... Appellant/Petitioner

Vs.

1.Saran Kumar

2.Branch Manager,

Reliance General Insurance Company Limited,

No.89, 100 Feet Road, Vivyan Plaza,

Ground Floor, Mudaliarpet,

Pondicherry Town,

Pondicherry District and State.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.03.2020 made in M.C.O.P.No.155 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam.

For Appellant : Mr.M.Balasubramanian

For R1 : No appearance

For R2 : Mrs.C.Harini
for Mr.M.B.Raghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.03.2020 made in M.C.O.P.No.155 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam.

2.The appellant is the claimant in M.C.O.P.No.155 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.02.2017.



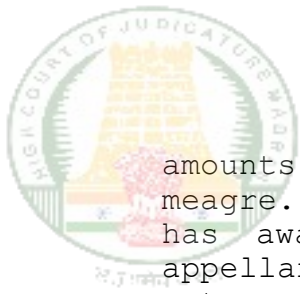
3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No.PY 02 Q 1815 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,34,682/- 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 sustained grievous head injury, right and left leg injury, left eye injury and entire body fracture. The Medical Board from Nagapattinam Government Hospital examined the appellant and certified that appellant suffered 40% disability and issued Ex.X1/disability certificate to that effect. The Tribunal has awarded only a meagre sum of Rs.3,000/- per percentage of disability. The appellant was running Provisional Stores and was earning a sum of Rs.20,000/- per month at the time of accident. To prove the same, the appellant produced Ex.P16/copy of permit license. The Tribunal did not accept Ex.P16 and fixed only a meagre sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for two months. The Tribunal ought not to have fixed the notional income suo motto by arbitrary imagination and the compensation awarded by the Tribunal towards loss of income is meagre. The amounts awarded by the Tribunal towards pain and sufferings, transportation, attendant charges and extra nourishment are also meagre. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes and prayed for enhancement of compensation.

6.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.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted the disability certificate issued by the Medical Board from Nagapattinam Government Hospital and awarded a sum of Rs.1,20,000/- for 40% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The Tribunal rejected Ex.P16/copy of permit license on the ground that Ex.P16 was obtained from the Tamil Nadu Food Department by paying a sum of Rs.2,000/- on 10.01.2020, i.e., one month prior to examining the appellant. Hence, the appellant is not entitled to compensation towards loss of income by fixing a sum of Rs.15,000/- per month as notional income as claimed by him. The

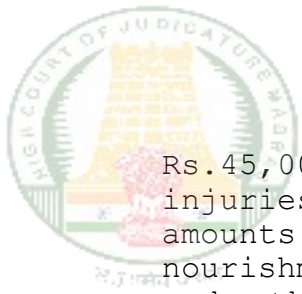


amounts awarded by the Tribunal under different heads are not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.3,34,682/- as compensation to the appellant and the same is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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.

9. It is the case of the appellant that in the accident he sustained grievous head injury, right and left leg injury, left eye injury and entire body fracture. The Medical Board from Nagapattinam Government Hospital examined the appellant and certified that appellant suffered 40% disability and issued Ex.X1/disability certificate to that effect. The Tribunal accepted the disability certificate issued by the Medical Board from Nagapattinam Government Hospital and awarded a sum of Rs.1,20,000/- for 40% disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2017 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.2,00,000/- (Rs.5,000/- X 40% of disability).

10. It is the contention of the appellant that he was running Provisional Stores and was earning a sum of Rs.20,000/- per month at the time of accident. To prove the same, the appellant produced Ex.P16/copy of permit license. The Tribunal rejected Ex.P16/copy of permit license on the ground that Ex.P16/cash receipt was obtained from the Tamil Nadu Food Department by paying a sum of Rs.2,000/- on 10.01.2020, i.e., one month prior to examining the appellant. The reason given by the Tribunal for rejecting Ex.P16 is proper but the monthly income of the appellant fixed by the Tribunal at Rs.7,500/- is not proper. The accident occurred in the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.15,000/- 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 three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to



Rs.45,000/- (Rs.15,000/- X 3 months). Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment, pain and sufferings and attendant charges are meagre and the same are enhanced to Rs.20,000/-, Rs.25,000/-, Rs.30,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Due to the injuries and disability, the appellant would have suffered inconvenience and would be facing discomfort in his life. Hence, the appellant is entitled to a sum of Rs.20,000/- towards loss of amenities. The appellant is entitled to a sum of Rs.3,000/- towards damages to clothes. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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	1,20,000/-	2,00,000/-	Enhanced
2.	Pain and sufferings	20,000/-	30,000/-	Enhanced
3.	Loss of income	15,000/-	45,000/-	Enhanced
4.	Extra nourishment	10,000/-	25,000/-	Enhanced
5.	Medical expenses	1,52,682/-	1,52,682/-	Confirmed
6.	Transportation	10,000/-	20,000/-	Enhanced
7.	Attendant charges	6,000/-	20,000/-	Enhanced
8.	Loss of amenities	-	20,000/-	Granted
9.	Damages to clothes	-	3,000/-	Granted
	Total	Rs.3,33,682/-	Rs.5,15,682/-	Enhanced by Rs.1,81,000/-
		-		-
	Tribunal arrived at	Rs.3,34,682/-		(Rs.5,15,682/- - Rs.3,34,682/-)

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,34,682/- is hereby enhanced to Rs.5,15,682/- together with interest at the rate of 7.5% per annum from the date 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.155 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Nagapattinam. 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. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 16.10.2020 made in C.M.P.No.11669 of 2020 in C.M.A.No.SR.67568 of 2020. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Nagapattinam.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.1643 of 2020

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