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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2021

Pronounced on : 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.111 of 2014

C.Mohammed Khaleel .. Appellant/ Petitioner

Vs.

1.J.Gopinath
(Remained ex-parte before the Trial Court)

2.National Insurance Co.Ltd.,
No.751, Anna Salai, 2nd Floor,
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 18.09.2013 made in M.C.O.P.No.2743 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub-Court-I, Chennai.

For Appellant	: Mr.N.M.Muthurajan
For R2	: Mr.R.Ravichandran
For R1	: Exparte

JUDGMENT

(The case has been heard through video conference)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.09.2013 made in M.C.O.P.No.2743 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub-Court-I, Chennai.

2.The appellant is claimant in M.C.O.P.No.2743 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub-Court-I, Chennai. He filed the 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 04.05.2009.

3.According to the appellant/claimant, on 04.05.2009, at about 6.20 hours, while the appellant was waiting near Buhari



Hotel Bus Stop, near East Coast Road, Neelankarai, Chennai-600 041. At that time, a car bearing Registration No.TN-04-AB-3328, driven by its driver in a rash and negligent manner, violating the traffic rules and dashed against the appellant. Due to the said accident, the appellant sustained grievous injuries. Therefore, he filed the above claim petition claiming compensation.

4.The said claim petition was resisted by the respondent by filing a counter affidavit, disputing the nature of injuries, period of treatment, occupation and income of the claimant. It is stated that the claimant had suddenly crossed the road without noticing the car was moving on the road and that the injuries sustained by the appellant are simple injuries.

5.The 1st respondent remained ex-parte before the Tribunal.

6.In order to prove his claim, the claimant examined himself and the Doctor who treated him as P.W.1 and P.W.2 and he also marked 15 documents as Exs.P1 to P15. On the side of the 2nd respondent/Insurance Company, no oral evidence and no documentary evidence produced.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent, being the insurer of the car to pay a sum of Rs.1,83,600/- as compensation to the appellant.

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

9.The learned counsel appearing for the appellant contended that the appellant sustained compound and commuted fracture of both bones, internal injury in chest, soft tissue injuries in right knee, surgeries conducted and implants were fixed. The appellant has taken first-aid treatment on 04.05.2009, in Santhi Hospital, Neelankarai, Chennai-41, then admitted as inpatient at Star Bone and Joint Clinic Hospital, Triplicane, Chennai-600 005 from 04.05.2009 to 16.05.2009, totally 13 days as inpatient. The appellant continued his treatment for a long time as outpatient. However, the Tribunal has awarded only a sum of Rs.13,500/- towards loss of income for the period of three months at the rate of Rs.4,500/-. Due to injuries suffered by the appellant, he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation for the disability sustained by the appellant. The Tribunal has not awarded any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.



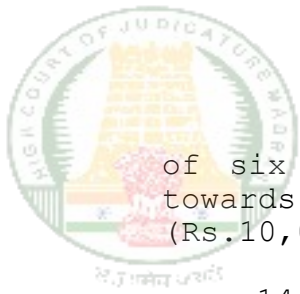
10.Per contra, Mr.R.Ravichandran, learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant and adopted percentage method for awarding compensation towards 40% disability, which is excessive. Therefore, the appellant is not entitled to any amount towards attendant charges. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

12.Now the point for consideration is whether the appellant is entitled for enhancement of the compensation as prayed for by him?

POINT:

13.It is the contention of the appellant that he suffered compound and commuted fracture of both bones, internal injury in chest, soft tissue injuries in right knee, surgeries conducted and implants were fixed. P.W.2/Doctor has assessed the disability of the appellant at 40%. Based on the medical records and the injuries suffered by the claimant, the Tribunal accepted the disability assessed by P.W.2/Doctor awarded compensation towards 40% disability by adopting percentage method. The 2nd respondent-Insurance Company has not produced any contra evidence to disprove the contention of P.W.2 and Ex.P14/disability certificate. Therefore, considering the nature of injuries and deposition of P.W.2/Doctor, the appellant is entitled to compensation for 40% disability. The appellant has contended that he was aged 28 years at the time of accident and was working as a Briyani preparing business on contract basis with Ponnusamy Hotel, Chennai and was earning a sum of Rs.15,000/- per month. He produced Ex.P11/Employment certificate. It is a certificate issued by Ponnusamy Hotel. But, there is no mention of salary in Ex.P11. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2009 and the notional income fixed by the Tribunal is meagre. Considering the age of the appellant and year of accident, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. The correct multiplier for the age group of '28' is '17'. In view of the above, the compensation awarded by the Tribunal towards disability is modified to Rs.8,16,000/- (10,000 X 12 X 17 X 40/100). Due to the injuries and disability, the appellant would not have attended his work atleast for a period



of six months. The Tribunal has awarded a sum of Rs.13,500/- towards loss of earning and the same is enhanced to Rs.60,000/- (Rs.10,000/- X 6 months).

14. From the award of the Tribunal, it is seen that the appellant has taken treatment in the Star Bone and Joint Clinic Hospital, Triplicane, as in-patient for 13 days and also continued his treatment for a long time as outpatient. However, the Tribunal has not awarded any amount towards attendant charges. This Court awarded a sum of Rs.20,000/- towards attendant charges. The Tribunal has awarded a meagre sum of Rs.5,000/- towards transportation and extra nourishment and the same are enhanced to Rs.10,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and 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 or reduced
1.	Disability	80,000/-	8,16,000/-	Enhanced
2.	Loss of earning	13,500/-	60,000/-	Enhanced
3.	Transportation	5,000/-	10,000/-	Enhanced
4.	Extra nourishment	5,000/-	25,000/-	Enhanced
5.	Medical expenses	65,100/-	65,100/-	Confirmed
6.	Pain and sufferings	15,000/-	15,000/-	Confirmed
7	Attendant charges	-	20,000/-	Granted
	Total	Rs.1,83,600/-	Rs.10,11,100 /-	Enhanced by Rs.8,27,500 /-

15. Accordingly, point for consideration is answered in favor of the appellant/claimant and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,83,600/- is hereby enhanced to Rs.10,11,100/- 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 amount of compensation. The 2nd respondents being the insurer of the car 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2743 of 2009 on the file of Motor Accidents Claims Tribunal, Special Sub-Court-I, Chennai.



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. No costs.

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Sd/-
Assistant Registrar(ssa)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Special Sub-Judge-I,
Motor Accidents Claims Tribunal, Chennai.

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

+1 cc to Mr.N.M.Muthurajan, Advocate Sr.NO.19895
+1 cc to Mr.R.Ravichandran, Advocate Sr.NO. 20284

C.M.A.No.111 of 2014

BR(CO)
A.SK(10.11.2021)