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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1148 of 2014

P.Jaganathan

... Appellant/Petitioner

Vs.

1.V.Ramesh

(1st respondent remained exparte before the Tribunal)

2.IFFCO TOKIO General Insurance Co. Ltd.,

No.16-3-519 Ramamurthy Nagar,

Nellore 524 003.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2013, made in M.C.O.P. No.1070 of 2009, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.G.Balachandran

For Respondents : Mrs.K.Saraswathi (For R2)
for M/s.C.R.Krishnamoorthy

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of compensation granted by the award dated 10.07.2013, made in M.C.O.P. No.1070 of 2009, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.1070 of 2009, on the file of the VI Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.10,00,000/- as



compensation for the injuries sustained by him in the accident that took place on 14.01.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the 1st respondent, driver-cum-owner of the Auto Rickshaw and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.2,20,500/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 10.07.2013, made in M.C.O.P. No.1070 of 2009, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained fracture of left femur, for which bone grafting was done on 31.01.2009 and took treatment as in-patient at Government General Hospital from 15.01.2009 to 14.02.2009, for a period of 30 days, at For Hospital, Chennai from 29.04.2009 to 14.05.2009, for a period of 17 days and at Narayana Medical College Hospital, Nellore from 27.08.2009 to 10.09.2009, for a period of 14 days. P.W.2-Doctor examined the appellant and certified that the appellant suffered 50% permanent disability and marked the disability certificate as Ex.P12. The Tribunal, without considering the nature of injuries and treatment taken, erroneously reduced the percentage of disability from 50% to 40% and awarded meagre amount of Rs.1,000/- per percentage towards disability. Considering inflation in the cost of living, the Tribunal ought to have awarded Rs.2,000/- per percentage for 50% disability. Due to the injuries sustained in the accident, the appellant lost his avocation. Considering the functional disability suffered by the appellant, the Tribunal ought to have adopted multiplier method in awarding compensation towards loss of income. The Tribunal failed to award the amounts incurred towards medical expenses and also failed to award any amount towards loss of amenities. The amounts awarded by the Tribunal under conventional heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Tribunal considering the evidence of P.W.2 Doctor and Ex.P12 - disability certificate produced by him, granted compensation towards disability by adopting percentage method. The total compensation awarded by the Tribunal under different heads are not meagre.



7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9. According to the appellant, he was running a Fast Food Stall and was earning a sum of Rs.10,000/- per month. The Tribunal, in the absence of any evidence to prove his avocation and income, fixed the monthly income of the appellant at Rs.4,500/-. The accident is of the year 2009. Considering the year of accident and nature of work done by the appellant, a sum of Rs.8,000/- per month is fixed as notional income. The appellant has taken treatment as in-patient at three different Hospitals in three different spells. The amounts awarded by the



Tribunal towards attendant charges and pain and suffering are meagre and the same are enhanced to Rs.30,000/- each. It is the case of the appellant that due to the injuries sustained in the accident, he could not continue his avocation and suffered loss of income. The Tribunal awarded a sum of Rs.27,000/- towards loss of income for 6 months. Considering the nature of injuries suffered and treatment taken, a sum of Rs.72,000/- [Rs.8,000/- x 9 months] is granted towards loss of income for 9 months. The consolidated amount of Rs.20,000/- granted towards transportation, extra nourishment and damage to clothes is meagre and the same is enhanced to Rs.35,000/-. The Tribunal rightly rejected some of the medical receipts as the same are only advance paid. 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income for 6 months	27,000/-	72,000/-	Enhanced
2.	Transportation, Extra nourishment and Damage to clothes	20,000/-	35,000/-	Enhanced
3.	Medical expenses	93,500/-	93,500/-	Confirmed
4.	Attendant charges	15,000/-	30,000/-	Enhanced
5.	Pain and sufferings	25,000/-	30,000/-	Enhanced
6.	Disability	40,000/-	1,50,000/-	Enhanced
	Total	2,20,500/-	4,10,500/-	Enhanced by Rs.1,90,000/-



10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,20,500/- is enhanced to Rs.4,10,500/- 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 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.1070 of 2009, 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, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gsa
To

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

Copy to

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

C.M.A.No.1148 of 2014

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srg 28/12/2021