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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2163 of 2014

M.Siva

.. Appellant/Petitioner

Vs.

1.M.Kamalbadcha

2.Branch Manager,

New India Assurance Company Limited,
Perambalur Post, Perambalur Vattam,
Perambalur District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.10.2013 made in M.C.O.P.No.360 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.M.Krishnamoorthy
No appearance for R1

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 31.10.2013 made in M.C.O.P.No.360 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

2.The appellant is the claimant in M.C.O.P.No.360 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.04.2009.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.98,000/- 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, 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 suffered fracture in his spine, injuries in his hip, right leg and his back. P.W.3/Doctor examined the appellant and certified that the appellant suffered 34% disability and issued Ex.P10/disability certificate to that effect. The Tribunal ought to have awarded compensation for loss of earning capacity of the appellant considering the nature of work and nature of injuries sustained by him. At the time of accident, the appellant was aged 20 years, working as Computer Operator in a Private Company and was earning a sum of Rs.7,000/- per month. But, the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant and awarded compensation for loss of income only for three months. The Tribunal ought to have awarded compensation for loss of income by fixing a sum of Rs.7,000/- as monthly income and by granting future prospects. The Tribunal has not awarded any amount towards loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings, disability, transportation, loss of income and extra nourishment are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted the percentage of disability of the appellant at 34% as assessed by P.W.2/Doctor and awarded a sum of Rs.68,000/- for 34% of disability at the rate of Rs.2,000/- per percentage of disability and the same is not meagre. The appellant has not proved that he suffered any functional disability or his income was reduced and hence, he is not entitled to any compensation towards loss of earning capacity. 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.3,000/- per month as notional income of the appellant and awarded compensation for loss of income for three months and the same is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.98,000/- as compensation to the appellant and the same is not meagre. The appellant has not made out any case for enhancement of

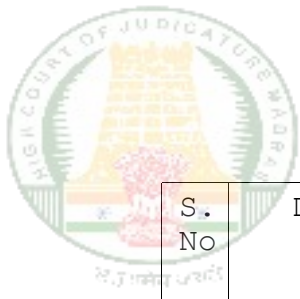


compensation and prayed for dismissal of the appeal.

7. 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.

8. From the materials available on record, it is seen that in the accident the appellant suffered fracture in his spine, injuries in his hip, right leg and his back. P.W.3/Doctor examined the appellant and certified that the appellant suffered 34% disability and issued Ex.P10/disability certificate to that effect. The Tribunal accepted the percentage of disability of the appellant at 34% as assessed by P.W.2/Doctor and awarded a sum of Rs.68,000/- for 34% of disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2009 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is meagre. Therefore, the appellant is entitled to a sum of Rs.2,500/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.85,000/- (Rs.2,500/- X 34% disability). The appellant has not proved that he suffered any functional disability or his income was reduced and hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method.

9. It is the contention of the appellant that at the time of accident, he was aged 20 years, working as Computer Operator in a Private Company and was earning a sum of Rs.7,000/- per month. The appellant has not filed any document 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.3,000/- per month as notional income of the appellant and awarded a sum of Rs.9,000/- towards loss of income for three months at the rate of Rs.3,000/- per month. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.5,000/- per month is fixed as his notional income. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.15,000/- (Rs.5,000/- X 3 months). The appellant has taken treatment in the Government Hospital, Perambalur as inpatient for 3 days from 09.04.2009 to 11.04.2009. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and hence, the same are enhanced to Rs.5,000/- each. The Tribunal has not awarded any amount towards loss of amenities. The appellant is entitled to a sum of Rs.5,000/- towards loss of amenities. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	68,000/-	85,000/-	Enhanced
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Medical expenses	1,500/-	1,500/-	Confirmed
5.	Transportation	2,500/-	5,000/-	Enhanced
6.	Loss of Income	9,000/-	15,000/-	Enhanced
7.	Loss of amenities	-	5,000/-	Granted
	Total	Rs.98,000/-	Rs.1,31,500/-	Enhanced by Rs.33,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.98,000/- is hereby enhanced to Rs.1,31,500/- 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, 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.360 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur, 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, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Deputy Registrar (AD II)

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Sub Assistant Registrar

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To

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

2.The Section Officer,
VR Section,
High Court,
Madras.

+2ccs to M/s.V.Mohan Choudary, Advocate Sr No.29908

C.M.A.No.2163 of 2014

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