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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO. 2283 OF 2014

Manikandan

...Appellant / Claimant

Versus

1.D.Banugopan

2.M/s.United India Insurance Co., Ltd
No.235, Gandhi Road,
Arni-632 301.

...Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.08.2013 made in M.C.O.P.No.113 of 2009 on the file of the Motor Accident Claims Tribunal, (Sub Court), Madurantagam.

For Appellant	:	Mr.K.Govi Ganesan
For R2	:	Mr.C.Paranthaman
R1	:	Exparte before the Tribunal

JUDGMENT

(Heard through Video Conferencing)

Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 30.08.2013 passed in M.C.O.P.No. 113 of 2009 on the file of Motor Accident Claims Tribunal, (Sub Court), Madurantagam, the present appeal has been filed by the claimant seeking enhancement of the compensation amount.

2. It is the case of the appellant/claimant before the Tribunal that on 28.09.2009 at about 13.40 hours when the claimant along with his brother Kannan were travelling in a TVS Super XL proceeding from East to West on Madhur to Elapakam



road, the driver of the Prasanna Bus, who came from opposite direction drove the bus in a rash and negligent manner, hit against the TVS Super XL and the claimant sustained grievous injury. The claimant has sustained permanent disablement and he filed the claim petition before the Tribunal claiming compensation of Rs.5,00,000/-.

3. The second respondent herein/the Insurance company has filed counter statement disputing the manner of accident and the injuries sustained by the claimant. The Insurance Company has also disputed the occupation and income of the claimant and prayed for dismissal of the claim petition.

4. In order to prove the claim on the side of the appellant/claimant the petitioner was examined as P.W.1 and one Dr.Kannan Isac was examined as P.W.2.Ex.P1 to P12 were marked. On the side of the Insurance Company neither oral nor documentary evidence was adduced.

5. After considering the entire materials available on record, the tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the offending vehicle i.e., Prasanna Bus which was insured with the 2nd respondent Insurance Company and owned by the first respondent herein. Hence the tribunal had passed an award for a total sum of Rs.67,550/- with interest at rate of 7.5% per annum from the date of claim petition till the date of payment. The breakup details of the award passed by the Tribunal are as follows:

For Permanent Disability	= Rs. 45,000/-
Pain and Suffering	= Rs. 10,000/-
Extra Nourishment	= Rs. 2,000/-
Transport Charges	= Rs. 3,000/-
X-ray Expenses	= Rs.350
loss of income for the period during treatment	= Rs.7,200/-

Total	= Rs. 67,550/-

6. Challenging the same the present appeal has been filed by the appellant/claimant.

7. The learned counsel for the appellant/claimant submitted that prior to the accident, the appellant was working



as a carpenter and earned a sum of Rs.9,000/- per month. Whereas the Tribunal had erred in fixing the income of the appellant as Rs.6,000/- only. It is further submitted that the appellant was issued permanent disability certificate for 45% of disability and the Tribunal had given only Rs.45,000/- towards the same. The learned counsel would also submit that the award of compensation under various heads are very meagre and that has to be enhanced, considering the nature of injuries sustained by the appellant and also the nature of his avocation.

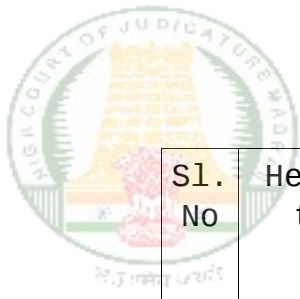
8. Per contra, the learned counsel for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal. While coming to the avocation of the claimant though it is argued that the claimant was working as a carpenter and earning Rs.9,000/- per month, no documentary evidence was produced by the claimant for his avocation or the income.

9. The learned counsel for the 2nd respondent would fairly concede that pertaining to the loss of income during the period of treatment, a little amount can be enhanced under the head "loss of income". Hence this Court is of the view to take Rs.10,000/- towards loss of income.

10. The Tribunal has awarded only Rs.10,000/- towards pain and suffering which has to be enhanced, considering the nature of injury sustained by the appellant. Further, the amount of compensation awarded for extra nourishment and transport also have to be enhanced, considering the cost of living and escalation of prices. The Tribunal has not awarded any amount towards attendant charges and it would be reasonable to award Rs.4,650/- towards the same.

11. Thus, the award passed by the Tribunal, in comparison with the amounts now awarded by this Court is tabulated hereunder:

Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court	Confirmed/enhanced
1	For permanent disability	Rs.45,000/-	Rs.45,000/-	confirmed



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Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court	Confirmed/enhanced
2	Pain and Suffering	Rs.10,000/-	Rs.30,000/-	enhanced
3	Extra nourishment	Rs.2,000/-	Rs.5,000/-	enhanced
4	Transportation	Rs.3,000/-	Rs.5,000/-	enhanced
5	Attendant charges	--	Rs.4,650/-	Now granted
6	Loss of income	Rs.7,200/-	Rs.10,000/-	enhanced
7.	Medical Expenses	Rs.350/-	Rs.350/-	confirmed
	Total	Rs.67,550/-	Rs.1,00,000/-	enhanced

12. In the result, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is modified and enhanced from Rs. 67,550/- to Rs.1,00,000/-
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

No costs.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

mpa



To
The Subordinate Judge,
The Motor Accident Claims Tribunal,
(Sub Court), Madurantagam.

+1cc to Mr.C.Paranthaman, Advocate SR.No.26600

+1cc to Mr.K.Govi Ganesan, Advocate SR.No.26483

CMA.No.2283 of 2014

SV(CO)
RVM(23/09/2021)