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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1867 of 2020

S.Perumal

.. Appellant/Petitioner

Vs.

1.S.Gurusamy

2.The New India Assurance Company Limited,
Motor Third Party Claims Hub,
No.45, Moore Street,
Chennai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.07.2019 made in M.C.O.P.No.8260 of 2015 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court) Chennai.

For Appellant : Mr.K. Varadha Kamaraj

For Respondents : Mr.K. Thirunavukkarasu (R2)
No Appearance (R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 01.07.2019 made in M.C.O.P.No. 8260 of 2015 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court) Chennai.

2.The appellant is the claimant in M.C.O.P.No.8260 of 2015 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court) Chennai. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation on account of the injuries sustained by him in an accident that took place on 04.09.2015.



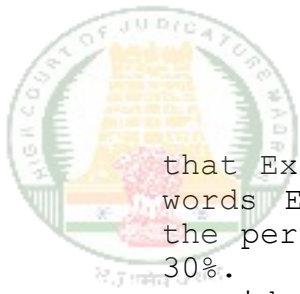
3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle bearing Registration No.TN-59-BB-8934 and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,26,300/- as compensation 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 though the Chief Civil Surgeon, Government Peripheral Hospital, K.K.Nagar issued disability certificate, which has been marked as Ex.P8, the Tribunal has fixed disability at 30% which is erroneous for the grievous injuries sustained by the Claimant. He further submitted that by considering the nature of injuries sustained by the Claimant, the Tribunal ought to have awarded compensation towards future prospects. It is further contended that the Tribunal ought to have fixed a sum of Rs.15,000/- per month as monthly income of the injured, by considering the evidence of P.W.2- Secretary of Anna Abey Auto Driver Association.

6. It is the further contention of the learned counsel for the Appellant that the Tribunal awarded a sum of Rs.40,000/- towards Loss of Income during treatment period which is very low. The claimant being a Auto driver had sustained fracture in his right leg and other grievous injuries, due to which he is not able to work as before and therefore the Claims Tribunal ought to have taken higher amount while calculating the compensation towards disability. He further submitted that the compensation awarded towards other heads are also very low and the same needs to be enhanced.

7. The learned counsel appearing for the 2nd respondent-Insurance Company submitted that though the accident occurred on 04.09.2015, the disability certificate has not been issued in terms of Rule 4 of "The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Rules, 1996 (in short 'the Rules') and further Ex.P8 has not been accompanied with the mode of assessment/worksheet as stipulated in the "Guidelines & Gazette Notification issued by Ministry of Social Justice & Empowerment, GOI" which has been framed and published in the Gazette's Notification, as per the legal requirement of the Rules. He further submitted that though disability has been issued by Chief Civil Surgeon, Government Peripheral Hospital, K.K.Nagar, he has not been examined before the Tribunal and hence the Tribunal on finding



that Ex.P8 cannot be stated as indisputable document or in other words Ex.P8 cannot be considered as conclusive proof regarding the percentage of disability has rightly fixed the disability at 30%. He further submitted that the Claims Tribunal on considering both oral and documentary evidence has rightly awarded compensation and the same need not be interfered with.

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. I find force in the contention made by the learned counsel for the Second Respondent to the effect that that the Doctor who issued the disability certificate has not been examined. Further, the Appellant should have obtained the Disability Certificate from the Stanley medical hospital, where he has taken treatment as inpatient and in the absence of the same the percentage of disability awarded by the Claims Tribunal cannot be interfered with. However, considering the fact that the Appellant/Claimant is an autodriver and due to the fracture sustained by him in the right leg and also due to grievous injuries, he could not be able to work as before, this Court is of the view that a sum of Rs.4,000/- can be taken for per percentage of disability.

10. Accordingly, by taking a sum of Rs.4,000/- per percentage of disability, compensation awarded towards Disability is enhanced to Rs. 1,20,000/- (40,000x30).

11. Considering the evidence of P.W.2, this Court is of the view that a sum of Rs.11,000/- can be fixed as monthly income of the claimant and accordingly a sum of Rs. 11,000/- is fixed as monthly income of the claimant. Considering nature of injuries sustained by the claimant and the period of treatment undergone by him, this Court is of the view that Loss of income can be awarded for 8 months.

12. Accordingly, by fixing a sum of Rs.11,000/- per month as notional income and by calculating Loss of Income during treatment period for eight months, the compensation towards Loss of Income during treatment is awarded at Rs.88,000/- (11,000x8).

13. Considering the nature of injuries, period of treatment and also the nature of treatment undergone by the appellant, the compensation awarded towards Transport and Extranourishment is enhanced from Rs.20,000/- to Rs.40,000/-, Pain and Sufferings is enhanced from Rs.30,000/- to Rs.40,000/-, Attender charges is enhanced from Rs. 14,100/- to Rs.23,500/- (by awarding a sum of Rs.500/- per day for 47 days (47x500)). Loss of amenities is enhanced from Rs.10,000/- to Rs.15,000/-



14. 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.	Pain and suffering	30,000/-	40,000/-	Enhanced
2.	Transport and Extra Nourishment	20,000/-	30,000/-	Enhanced
3.	Disability	90,000/-	1,20,000/-	Enhanced
4.	Loss of Income during treatment period	40,000/-	88,000/-	Enhanced
5.	Attender charges	14,100/-	23,500/-	Enhanced
6.	Medical Expenses	22,166/-	22,166/-	Confirmed
7.	Loss of amenities	10,000/-	15,000/-	Confirmed
	Total Rounded off	Rs.2,26,266/- Rs.2,26,300/-	Rs. 3,38,666/- Rs.3,38,800/-	Enhanced by Rs.1,12,500/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,26,300/- is hereby enhanced to Rs.3,38,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. 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 eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No. 8260 of 2015 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court) Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant is not entitled to any interest on the amount of Rs.1,12,500/-, the



amount now enhanced by this Court for the default period as per the order of this Court dated 08.12.2020 made in C.M.P.No.12283 of 2020. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(V Small Causes Court)
Chennai.

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

+1cc to Mr.K. Varadha Kamaraj, Advocate Sr No.39910

C.M.A.No.1867 of 2020

MG (CO)
PR (26/10/2021)