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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2631 of 2014

C.Mohan

.. Appellant /Petitioner

Vs.

1.M.Karuppiyah

(R1 was set ex-parte in the Trial Court)

2.ICICI Lombard General Insurance Co.Ltd.,
No.140, Chotabai Centre, II Floor,
Nungambakkam High Road,
Chennai-600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2014 made in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : Mrs.R.Shree Vidhya

JUDGMENT

(The Case has been heard through Video Conference)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 12.02.2014 made in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is the claimant in M.C.O.P.No.659 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. He filed the above claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.12.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the two wheeler



belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the two wheeler, to pay a sum of Rs.1,83,000/- as compensation to the appellant/claimant.

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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 sustained malunited fracture of right femur, shortening of 3 inches, muscle quadriceps and ham strings, adductors and abductors are weak by grade IV post traumatic stiffness of right hip joint. Painful movements reduced by 20 degree in flexion and extension, abduction and adduction, difficult to walk on slope, climb stair case, sit cross legged and squat, walking with the help of stick. P.W.2/Doctor has assessed the disability suffered by the appellant at 60%. The Tribunal, without giving any valid reason, reduced the percentage of disability from 60% to 40% and awarded a meagre sum of Rs.80,000/- towards disability. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning power. The appellant was working as Watch Man and was earning a sum of Rs.10,000/- per month. The Tribunal, without considering the same, awarded a very meagre sum of Rs.20,000/- towards loss of income. Due to the injuries and disability, the appellant has taken treatment in Sri Ramachandra Hospital, Porur, Chennai, as out-patient from 06.12.2012 to till date. The amounts awarded by the Tribunal towards attendant charges, loss of amenities, transportation, extra nourishment, pain & sufferings and medical expenses are meagre and therefore, prayed for enhancement of compensation.

6. Per contra, Mrs.R.Shree Vidhya, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 60% to 40% on the ground that assessment of disability by P.W.2/Doctor is on the higher side. Hence, the appellant is not entitled to compensation for 60% disability. The appellant failed to prove that he suffered functional disability and hence, he is not entitled to compensation towards loss of earning power by adopting multiplier method. The appellant has not produced any documents to show that he lost income during the treatment period. In such circumstances, the compensation awarded by the Tribunal towards loss of income for four months is not meagre. The amounts awarded by the Tribunal under different heads are also 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 second respondent/Insurance Company and perused the materials available on record.

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8. From the materials available on record, it is seen that in the accident, the appellant sustained malunited fracture of right femur, shortening of 3 inches, muscle quadriceps and ham strings, adductors and abductors are weak by grade IV post traumatic stiffness of right hip joint. Painful movements reduced by 20 degree in flexion and extension, abduction and adduction, difficult to walk on slope, climb stair case, sit cross legged and squat, walking with the help of stick. To prove the same, the appellant examined P.W.2/Doctor, who certified that the appellant sustained 60% disability and issued Ex.P9/disability certificate to that effect. The learned counsel appearing for the second respondent-Insurance Company has contended before the Tribunal that the disability assessed by P.W.2/Doctor is on the higher side. The Tribunal reduced the percentage of disability to 40% on the ground that the assessment of disability by P.W.2/Doctor is on the higher side and awarded a sum of Rs.80,000/- (Rs.2,000/- X 40%) towards disability by awarding a sum of Rs.2,000/- per percentage of disability. The Tribunal has observed that P.W.2/Doctor has not treated the claimant and has only given disability certificate after examining the claimant. Hence, there is nothing erroneous in fixing the percentage of disability at 40% by the Tribunal. But, the amount of Rs.2000/- per percentage of disability fixed by the Tribunal is very meagre. The accident occurred in the year 2012 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- (Rs.3,000 X 40%). The appellant failed to prove that he suffered functional disability and hence, he is not entitled to any compensation towards loss of earning power by adopting multiplier method.

9. According to the appellant, he was working as a Watch Man and was earning a sum of Rs.10,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant. The accident occurred in the year 2012 and the notional income fixed by the Tribunal is meagre and monthly income is fixed at Rs.8,000/- per month. The Tribunal has awarded a meagre sum of Rs.5,000/- towards loss of income for four month. Due to the injuries and period of treatment taken by the appellant, he would not have attended his work atleast for a period of three months. Hence, a sum of Rs.24,000/- (Rs.8,000/- X 3 months) is awarded towards loss of



income for three months. 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
1.	Loss of income	20,000/-	24,000/-	Enhanced
2.	Transportation	7,000/-	7,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Damage to clothes	1,000/-	1,000/-	Confirmed
5.	Medical expenses	20,000/-	20,000/-	Confirmed
6.	Attender charges	10,000/-	10,000/-	Confirmed
7.	Loss of amenities	10,000/-	10,000/-	Confirmed
8.	Pain & sufferings	25,000/-	25,000/-	Confirmed
9.	Permanent disability	80,000/-	1,20,000/-	Enhanced
	Total	Rs.1,83,000/-	Rs.2,27,000/-	enhanced by Rs.44,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,83,000/- is hereby enhanced to Rs.2,27,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court, together 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.659 of 2013 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.III, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court fee, if



any, on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Deputy Registrar (Accounts)

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Sub Assistant Registrar

gbi

To

1.The Judge,
Small Causes Court No.III,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 35243

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.35261

C.M.A.No.2631 of 2014

RLD (CO)
GN(27/10/2021)