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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.07.2021	Delivered on: 02.09.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2943 of 2014

Joseph Rosario @ Joseph

..Appellant/Petitioner

Vs.

1. V.Rangasamy

2. The National Insurance Company Limited,
Motor Third Party Cell,
No.751, Anna Salai,
Chennai - 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.08.2013 made in M.C.O.P.No.139 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram.

For Appellant : Mr.Richard Suresh Kumar
for C.R.Suresh

For R2 : Mr.M.Krishnamoorthy

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 20.08.2013 made in M.C.O.P.No.139 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram.

2.The appellant is the claimant in M.C.O.P.No.139 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram. He filed the above said claim petition claiming a sum of Rs.16,50,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2005.

3.According to appellant, on 04.11.2005 at about 05.45 hours while he was collecting bus stand fee for buses on G.S.T.



Road near Tambaram Moffusil Bus stand, the driver of the van bearing Registration No.TN 20 L 5307 belonging to 1st respondent, who was driving the same from Chrompet to Chengalpattu, came in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident, the appellant sustained comminuted fracture left femur shaft, comminuted fracture left clavicle, fracture left 1st to 8th rib and right 2nd rib and multiple grievous injuries all over the body. After the accident, the appellant was taken to Chrompet General Hospital, Chrompet, Chennai, where he was given first aid treatment on 04.11.2005. Then he was referred to Government General Hospital, Chennai on the same day and further he was admitted at Sri Balaji Hospitals, Guindy, Chennai as inpatient from 05.11.2005 to 25.11.2005 and underwent surgeries on 09.11.2005 and 21.11.2005. Thereafter, he has taken treatment as inpatient at Sri Balaji Hospitals, Guindy, Chennai from 05.12.2005 to 07.12.2005. He has further taken treatment as outpatient till filing of the claim petition. Therefore, he filed the above said claim petition claiming a sum of Rs.16,50,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the van respectively.

4.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 van belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,24,500/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered comminuted fracture of shaft of left femur, comminuted fracture of left clavicle, middle with distal 1/3, fracture of 1st to 8th rib - left, fracture of 2nd rib - right, multiple abrasions and lacerations all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 65% disability and issued Ex.P30/disability certificate to that effect. The Tribunal considering the same, has awarded meagre sum of Rs.1,30,000/- for disability at the rate of Rs.2,000/- per percentage of disability. At the time of accident, the appellant was aged 24 years, working as Collection Agent under one K.Ramanathan, Contractor, Tambaram Municipality, Tambaram, Chennai-600 045 and was earning a sum of Rs.3,500/- per month as salary plus Rs.50/- per day as batta. He is also earning a sum of Rs.1,500/- per month from brokerage for house rentals. Due to the injuries and disability suffered by the appellant in the accident, he could not able to continue the work as he was doing earlier. Therefore,



the Tribunal ought to have adopted multiplier method and awarded compensation for loss of earning capacity. The appellant has taken treatment as inpatient at Sri Balaji Hospitals, Guindy, Chennai and thereafter at SRM Hospitals, Kattankulathur, Kancheepuram District for several times. The amounts awarded by the Tribunal for pain and sufferings, disability, attendant charges and medical expenses are meagre. The Tribunal has not awarded any amount towards mental agony and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2/Doctor and the disability certificate issued by him, has awarded a sum of Rs.1,30,000/- for 65% disability at the rate of Rs.2,000/- per percentage of disability and the same is excessive. The appellant has not proved his avocation and income by producing valid documents. In the absence of any documentary proof with regard to avocation and income, a sum of Rs.50,000/- awarded by the Tribunal for loss of earnings is excessive. He further contended that when the occupation itself is not proved, compensation for loss of earning capacity does not arise. The appellant has not proved that he suffered any functional disability or lost his entire earning capacity and hence, he is not entitled to any compensation towards loss of earning capacity by adopting multiplier method. The Tribunal considering the entire materials on record, has awarded a sum of Rs.6,24,500/- as compensation for the appellant, which is not meagre. In view of the same, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

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.It is the claim of the appellant/claimant in the claim petition that in the accident the appellant suffered comminuted fracture of shaft of left femur, comminuted fracture of left clavicle, middle with distal 1/3, fracture of 1st to 8th rib - left, fracture of 2nd rib - right, multiple abrasions and lacerations all over the body. To prove the same, the appellant examined himself as P.W.1 and Dr.Sai Chandran as P.W.2. P.W.2/Doctor examined the appellant and certified that the appellant suffered 65% disability and issued Ex.P30/disability certificate to that effect. The Tribunal considering the same, has awarded meagre sum of Rs.1,30,000/- for disability at the rate of Rs.2,000/- per percentage of disability. It is the further claim of the appellant/claimant in the claim petition that at the time of accident, he was aged 24 years at the time of accident, working as Collection Agent under one K.Ramanathan,



Contractor, Tambaram Municipality, Tambaram, Chennai-600 045 and was earning a sum of Rs.3,500/- per month as salary plus Rs.50/- per day as batta. He is also earning a sum of Rs.1,500/- per month from brokerage for house rentals. Except oral evidence, the appellant has not produced any documentary proof like salary slip, wage register and income certificate. Further, he has not even produced any Identity Card issued to him by the Tambaram Municipality to show that he is working in the collection unit in Tambaram Bus Stop under the contractor of Ramanathan to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the year of accident and age of the deceased, fixed a sum of Rs.4,000/- per month as notional income of the appellant and the same is not meagre.

10.The appellant also contended that due to the injuries and disability suffered by him in the accident, he could not able to continue his work as he was doing earlier. The appellant further contended that due to the injuries and disability suffered by him in the accident, his left leg is completely damaged and the bones as well as surgery wound are infected, puss is continuously oozing out of the wound and also the left leg of the appellant is in a very bad shape and length of the left leg is reduced by 5 inches and due to the same, the appellant has to limp and he cannot walk without the help of crutches and cannot stand continuously for more than ten minutes. The 2nd respondent has not examined any other Doctor to disprove the said contention of the appellant. Considering the nature of injuries, disability and the fact that the left leg of the appellant is severely damaged and he could not able to stand for more than ten minutes, this Court is of the view that the condition of the appellant's left leg would cause difficulty in doing any work. Hence, it would cause some loss of earning capacity. If the appellant has not met with the said accident, he would not have suffered the above injuries and disability, which causes difficulty in doing the work. Therefore, he is entitled to compensation for loss of earning capacity by adopting multiplier method. P.W.2/Doctor examined the appellant and certified that the appellant suffered 65% permanent disability and issued Ex.P30/disability certificate to that effect. P.W.2/Doctor has not assessed the percentage of disability for the whole body. Therefore, the disability suffered by the appellant for the whole body is fixed at 22%. The multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others vs. Delhi Transport Corporation & another] is '18'. Thus, the compensation awarded by the Tribunal for disability is modified to Rs.1,90,080/- (Rs.4,000/- X 12 X 18 X 22/100).

11.It is the further claim of the appellant/claimant that he has taken treatment as inpatient at Sri Balaji Hospitals, Guindy,



Chennai and thereafter at SRM Hospitals, Kattankulathur, Kancheepuram District for several times and the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant, he is entitled to a sum of Rs.20,000/- for attendant charges. Due to injuries and disability suffered by the appellant, he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.30,000/- towards loss of amenities. Considering the nature of injuries suffered by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are meagre and hence, the same are enhanced to Rs.15,000/- each. 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.	Disability	1,30,000/-	1,90,080/-	Enhanced
2.	Pain and sufferings	75,000/-	75,000/-	Confirmed
3.	Medical expenses	2,48,209/-	2,48,209/-	Confirmed
4.	Extra nourishment	10,000/-	15,000/-	Enhanced
5.	Attendant charges	-	20,000/-	Granted
6.	Transportation	10,000/-	15,000/-	Enhanced
7.	Loss of amenities	-	30,000/-	Granted
8.	Loss of income	50,000/-	50,000/-	Confirmed
9	Damages to clothes	1,500/-	1,500/-	Confirmed
10	Future loss of earning	1,00,000/-	1,00,000/-	Confirmed
	Total	Rs.6,24,709/- Rounded off to Rs.6,24,500/-	Rs.7,44,789/-	Enhanced by Rs.1,20,289/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,24,500/- is hereby enhanced to Rs.7,44,789/- 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.139 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Tambaram. 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tambaram.

Copy To

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

+1cc to Mr.C.R.Suresh, Advocate, S.R.No.44754

C.M.A.No.2943 of 2014

KV (CO)
RGA (25/10/2021)