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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2996 of 2014

C.Kesavamurthy

..Appellant/Petitioner

Vs.

1.V.Kavitha

2.Raguram Reddy

3.The Divisional Manager,
Oriental Insurance Company Limited,
D.O. VIII, 22.D.V.G. Road,
V.C.Plaza, Basavangudi,
Bangalore - 560 004.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.12.2012 made in M.C.O.P.No.1275 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.

For Appellant : Mr.N.U.Prasanna
for Mr.Mukund R.Pandiyan

For RR 1 & 2 : No appearance

For R3 : Mr.S.Arunkumar

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 28.12.2012 made in M.C.O.P.No.1275 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri.



2.The appellant is the claimant in M.C.O.P.No.1275 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. He filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.11.2007.

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 lorry belonging to 1st respondent and directed the respondents 1 to 3 to jointly and severally pay a sum of Rs.2,42,170/- 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 in the accident, the appellant sustained 7 X 6 extension with anatomical expenses below the right knee, right leg upper 1/3 tibia exposing 5 X 5 bone deep lacerations and multiple injuries all over the body. P.W.3/Doctor examined the appellant and certified that appellant suffered 55% disability and issued Ex.A12/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 50% and awarded compensation only for 50% disability. The Tribunal ought to have awarded compensation for 55% disability. At the time of accident, the appellant was aged 25 years, earning a sum of Rs.15,000/- per month by running Bajaj Service Unit and also doing weaving production of silk. Due to the injuries sustained by the appellant in the accident, he could not continue his work as he was doing earlier. Therefore, the Tribunal ought to have awarded compensation towards loss of earning by adopting multiplier method. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre. The Tribunal has not awarded any amount towards loss of amenities and future medical expenses and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.3/Doctor and nature of injuries sustained by the appellant, reduced the percentage of disability from 55% to 50%. Hence, the appellant is not entitled to compensation for 55% disability. The appellant has not proved that he suffered functional disability or lost his earning



capacity. Hence, he is not entitled to any compensation towards loss of income by adopting multiplier method. The Tribunal considering the entire materials on record, has awarded a sum of Rs.2,42,170/- 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.Though notice has been served on the respondents 1 & 2 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained 7 X 6 extension with anatomical expenses below the right knee, right leg upper 1/3 tibia exposing 5 X 5 bone deep lacerations and multiple injuries all over the body. To prove the same, the appellant examined Dr.M.Devendiran as P.W.3. P.W.3/Doctor examined the appellant and certified that appellant suffered 55% disability and issued Ex.A12/disability certificate to that effect. The Tribunal considering the evidence of P.W.3/Doctor and nature of injuries sustained by the appellant, reduced the percentage of disability to 50% and awarded compensation only for 50% disability. The Tribunal has not given any valid reason for reducing the percentage of disability from 55% to 50%. Further, the 3rd respondent/Insurance Company has not let in any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.A12/disability certificate. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any compensation towards future loss of income by adopting multiplier method. Therefore, the appellant is entitled to compensation for 55% of disability by adopting percentage method. The accident is of the year 2007 and a sum of Rs.2,000/- awarded by the Tribunal per percentage of disability is not meagre. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,10,000/- (Rs.2,000/- X 55% of disability).

10.It is the contention of the appellant that at the time of accident, he was aged 25 years, earning a sum of Rs.15,000/- per month by running Bajaj Service Unit and also doing weaving production of silk. The Tribunal considering the nature of injuries, disability and period of treatment, has awarded a sum



of Rs.10,000/- towards loss of income during treatment period. Considering the nature of work done by the appellant and nature of injuries suffered by him, this Court is of the view that the appellant would not have attended his work for a period of two months. Therefore, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.20,000/- (Rs.10,000/- X 2) by fixing monthly income at Rs.10,000/-. Considering the nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded by the Tribunal towards extra nourishment and attendant charges are enhanced to Rs.10,000/- each as the amounts awarded by the Tribunal are meagre. The appellant has not produced any medical records to show that he requires further medical treatment. Hence, he is not entitled to any amount towards future medical expenses. 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	1,00,000/-	1,10,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Medical expenses	1,06,172/-	1,06,172/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Attendant charges	5,000/-	10,000/-	Enhanced
6.	Extra nourishment	5,000/-	10,000/-	Enhanced
7.	Loss of Income	10,000/-	20,000/-	Enhanced
8.	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.2,42,172/- Rounded off to Rs.2,42,170/-	Rs.2,72,172/- Rounded off to Rs.2,72,170/-	Enhanced by Rs.30,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,42,170/- is hereby enhanced to Rs.2,72,170/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 to 3 are jointly and



severally 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.1275 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Krishnagiri. 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. It is made clear that the appellant is not entitled to any interest on the award amount for the delay period as per the order of this Court dated 23.09.2014 made in M.P.No.1 of 2014 in C.M.A.SR.No.8533 of 2014. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

+1 CC to Mr.S.Arunkumar, Advocate sr 69485

+1 CC to Mr. Mukund R. Pandian, Advocate sr 69864.

C.M.A.No.2996 of 2014

SPD(CO)
SP(21/01/2022)