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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.892 of 2014

E.Kannan

.. Appellant / Petitioner

Vs.

1.Rajendran

2.The United India Insurance Company Limited
Karaikal, Represented by its Branch Manager
No.2, Church street
Karaikal Town and District.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2014 made in M.C.O.P.No.60 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.K.Kumaraguru
for M/s.Sai and Bharath

For R1 : Mr.S.Srinivasan

For R2 : Mr.S.Arunkumar

J U D G M E N T

(This matter is heard through ?Video-Conferencing/Hybrid Mode?.)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 02.01.2014 made in M.C.O.P.No.60 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

2.The appellant is claimant in M.C.O.P.No.60 of 2013 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal. He filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.09.2012.



8. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.



9.The learned counsel appearing for the appellant contended that the appellant produced Exs.P7 to P11 medical bills. The Tribunal erroneously rejected certain bills and granted lesser amount towards medical expenses. The Tribunal failed to grant any amount towards future medical expenses. The appellant was aged 26 years at the time of accident and was a Mason by profession. He suffered fractures on right forearm and mandible. Due to fracture, he could not continue his work as Mason. The Tribunal ought to have granted compensation towards disability by adopting multiplier method. The appellant has taken treatment as in-patient for more than 20 days. The Tribunal has not granted any amount towards attendant charges. The amounts granted by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the appellant has not proved his avocation and income. The appellant has also not proved that due to the injuries, he could not continue his work as Mason and lost his earning capacity. In the absence of name in the bills, the Tribunal rightly did not accept some of the bills for Rs.8,808/-. The total compensation granted by the Tribunal is excessive. The appellant is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

11.Mr.S.Arunkumar, the learned counsel appearing for the 2nd respondent/Insurance Company contended that there is no award against the 2nd respondent. The offending vehicle was not insured with the 2nd respondent/Insurance Company. The Tribunal rightly directed the 1st respondent to pay the compensation, there is no claim against the 2nd respondent in the appeal and prayed for dismissal of the appeal against the 2nd respondent.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials on record.

13.From the materials on record, it is seen that it is the contention of the appellant that he was a Mason by profession at the time of accident and was earning a sum of Rs.500/- per day. The appellant failed to substantiate the same by letting in acceptable evidence. In the absence of document with regard to income of the appellant, the Tribunal fixed a sum of Rs.200/- per day as income of the appellant. The accident is of the year 2012. Even a coolie will be earning more than Rs.200/- per day



in the year 2012. The appellant was aged 26 years at the time of accident. Considering the age of appellant and date of accident, a sum of Rs.7,500/- per month is fixed as notional income of the appellant. Due to the injuries and fracture, the appellant would not have attended his work atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income during treatment period is enhanced to Rs.22,500/- (Rs.7,500/- X 3).

13(i). P.W.2/Doctor examined the appellant and certified that he suffered 34% disability. P.W.2/Doctor in his cross-examination admitted that percentage of disability will be reduced in future. The Tribunal considering the evidence of P.W.2/Doctor, fixed the disability of the appellant at 30%. The appellant has not proved that he lost his earning capacity and suffered functional disability. The Tribunal applied percentage method and granted compensation towards disability. There is no error in granting compensation by applying percentage method. The Tribunal granted a sum of Rs.1,000/- per percentage of disability. The accident is of the year 2012. The appellant is entitled to a sum of Rs.3,000/- per percentage of disability. The amount granted by the Tribunal towards partial disability is enhanced to Rs.90,000/- (Rs.3,000/- X 30%).

13(ii). The appellant has taken treatment as in-patient in Government General Hospital, Karaikal, for two days and thereafter, in Rohini Hospital, Tanjore, from 13.09.2012 to 22.09.2012. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is granted towards attendant charges. The Tribunal considering the medical bills produced by the appellant, held that appellant has not deducted amount for refund of medicines and produced duplicate bills. Considering the same, the Tribunal rightly deducted Rs.8,808/- and awarded a sum of Rs.79,600/- towards medical expenses, which is in order. The appellant has not produced any document to prove that he requires future medical expenses and therefore, he is not entitled to any amount towards future medical expenses. A sum of Rs.5,000/- granted by the Tribunal towards extra nourishment is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under all 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 Tribunalak (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and suffering	25,000	25,000	Confirmed
2.	Extra nourishment	5,000	10,000	Enhanced
3.	Partial disability	30,000	90,000	Enhanced
4.	Medical expenses	79,600	79,600	Confirmed
5.	Loss of income during treatment period	5,000	22,500	Enhanced
6.	Attendant charges	-	10,000	Granted
	TOTAL	1,44,600	2,37,100	Enhanced by Rs.92,500/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,44,600/- is hereby enhanced to Rs.2,37,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent 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. 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. This appeal is dismissed against the 2nd respondent/Insurance Company. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



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To

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1. The District Judge
Motor Accident Claims Tribunal
Karaikal.
2. The Section Officer
V.R.Section,
High Court, Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.60175
+1cc to Mr.S.Srinivasan, Advocate, S.R.No.59707

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NSK/16/06/2022