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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1945 of 2020

Jayaprakash

.. Appellant/Petitioner

Vs.

1.The Chairman,
Mahindra Arts and Science College,
Kalipatty, Tiruchengode Taluk,
Namakkal District.

2.The National Insurance Company Limited,
Selvanayagi Complex, Perundurai Road,
First Floor, Erode - 638 011. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2020 made in M.C.O.P.No.378 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan
For R2 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 27.02.2020 made in M.C.O.P.No.378 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

3.The appellant is the claimant in M.C.O.P.No.378 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.03.2017.

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 bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,61,344/- 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 fracture in lateral condyl and right tibial spine avulsion and multiple injuries all over his body. The Medical Board examined the appellant and certified that appellant suffered 7% disability and disability certificate was marked as Ex.C1. The Tribunal has awarded only a meagre sum of Rs.21,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded a sum of Rs.5,000/- per percentage of disability. The appellant has taken treatment as inpatient at Thirukumaran Hospital, Tiruchengode for 5 days from 07.03.2017 to 11.03.2017. The Tribunal has not awarded any amount towards loss of amenities, damages to clothes and future medical expenses. The appellant was working as Conductor in TNSTC Bus and was earning a sum of Rs.12,000/- per month. Due to the injuries and disability suffered by him in the accident, he could not do the work as he was doing earlier. The Tribunal has not awarded any amount towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Medical Board examined the appellant and certified that appellant suffered 7% disability. The Tribunal considering the disability certificate issued by Medical Board, awarded a sum of Rs.21,000/- towards disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.1,61,344/- as compensation to the appellant for the simple injuries sustained by him and the same is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

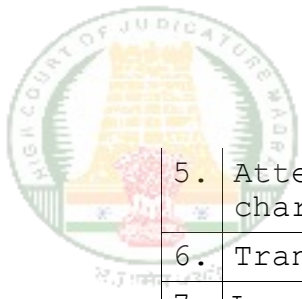
8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that it



is the contention of the appellant that in the accident he suffered fracture in lateral condyl and right tibial spine avulsion and multiple injuries all over his body. To prove the nature of injuries and disability, the appellant was referred to the Medical Board, Erode. The Medical Board after examining the appellant, certified that appellant suffered 7% disability and the disability certificate was marked as Ex.C1. The Tribunal considering the disability certificate issued by the Erode Medical Board, awarded a sum of Rs.21,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2017 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to rise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.35,000/- (Rs.5,000/- X 7% of disability). The appellant has taken treatment as inpatient at Thirukumaran Hospital, Tiruchengode for 5 days from 07.03.2017 to 11.03.2017. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.20,000/- is awarded towards loss of amenities. A sum of Rs.3,000/- is granted towards damages to clothes. 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 appellant has not proved that he lost his income during treatment period and that he could not do the work as he was doing earlier by producing valid documents. Hence, the appellant is not entitled to any amount towards loss of income. 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	21,000/-	35,000/-	Enhanced
2.	Pain and sufferings	55,000/-	55,000/-	Confirmed
3.	Medical expenses	45,344/-	45,344/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed



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5.	Attendant charges	25,000/-	25,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Loss of amenities	-	20,000/-	Granted
8.	Damages to clothes	-	3,000/-	Granted
	Total	Rs.1,61,344/-	Rs.1,98,344/-	Enhanced by Rs.37,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,61,344/- is hereby enhanced to Rs.1,98,344/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.378 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. 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(CS-V)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

+lcc to Mr.J.Chandran, Advocate, S.R.No.877

C.M.A.No.1945 of 2020

KV(CO)
CB(07/09/2021)