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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.3885 of 2019

Rajendiran

...Appellant/Petitioner

Vs.

1. Kodeeswaran

2. The New India Assurance Company Ltd.,
Nagapattinam,
Rep. by its Branch Manager,
Having his office at
T.S.No. 1817, Neela South Road,
Nagapattinam Town and District

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.235 of 2015 dated 24.06.2019 on the file of Motor Accident Claims Tribunal, (District Judge) Karaikal,

For Appellant :Mr.K.Varadha Kamaraj

For Respondents :Mr. J. Michael Visuvasam

for R2

R1 - No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation awarded by the order dated 24.06.2019 made in M.C.O.P.No.235 of 2015 on the file of Motor Accident Claims Tribunal, (District Judge), Karaikal.

2. The appellant is the claimant who filed M.C.O.P.No.235 of 2015, claiming a sum of Rs.50,00,000/- as compensation for the injuries suffered by him in the accident that took place on 17.05.2015.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due



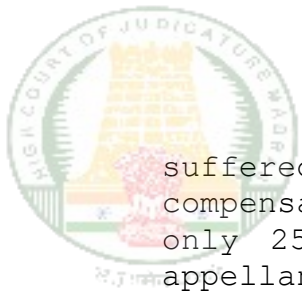
to the rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the first and second respondents to pay a sum of Rs.15,80,000/- as compensation jointly and severally, to the appellant/claimant respectively.

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4. Not being satisfied with the amount 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 fracture in his left leg and admitted in hospital as inpatient from 17.05.2015 to 02.06.2015 and underwent surgery and again admitted in hospital on 20.06.2015 underwent another surgery on 21.06.2016 and discharged from hospital on 24.06.2016. Medical Board has assessed that the appellant suffered 65% permanent disability and the Tribunal granted a meagre sum of Rs.13,16,250/- towards disability. Due to the injuries, the appellant is unable to continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for granting compensation towards future loss of earning power along with 25% enhancement towards future prospects. The appellant was working as a Mazon and was earning a sum of Rs.600/- per day at the time of accident. But the Tribunal fixed a meager sum of Rs.9,000/- per month as notional income of the appellant and awarded compensation for loss of income only for three months. The Tribunal ought to have fixed monthly income of the appellant at Rs.9,000/- and granted compensation towards loss of income for 12 months. The Tribunal has not awarded any amount towards attendant charges, extra nourishment. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meager and prayed for enhancement of compensation.

6. The learned counsel for the appellant submitted that the claimant who was 39 years old sustained fracture in his left leg and being a Mazon, he is unable to carry out the day today work and that partial shorten limb, deformity present in left leg, extensive scar and infection sinuses present and he is unable to climb, squat, and sit. There was a malunion of tibia and fibula on left leg. The Medical Board assessed disability at 65% and that the Tribunal instead of granting higher compensation due to the severe injuries caused, taken the monthly income as Rs.9,000/- even though there was an evidence let in by PW2 that he was drawing Rs.600/- per day. The injured was admitted in Ram Bone and Joint Hospital, Mayiladuthurai and undergone surgery. Ex.P.10 establishes that the claimant



suffered serious injuries but the Tribunal has awarded compensation for Pecuniary damages at Rs.13,16,250/- and awarded only 25% for future prospects and not at 40% and hence the appellant would be entitled for enhancement of compensation.

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7. Mr. Michael Visuvasam, learned counsel for the Insurance Company would contend that there is no dispute with regard to the accident and injuries sustained, but, the Medical Board has erroneously assessed 65% of total disability under various categories including scar and infection as 37%, stiffness of ankle knee 6%, functional disability at 36%, muscle wastage 3%, deformities 7%, shortening 4%, pain components 6% when there is functional disability at 36% and in total disability at 65%, hence the Tribunal awarded compensation under the head pecuniary damages taking note of the entire 65% disability assessed by the Medical Board and that loss of future earning has been taken by adopting multiplier method. It is no doubt that the claimant was admitted in the hospital initially for a period of 17 days and thereafter, subsequently for 5 days totally 22 days. But, the subsequent admission and discharge not disclosed about the disability as assessed by the Medical Board at 37%. Hence though the Insurance Company has not preferred an appeal, it is a fit case where compensation has got to be reduced as excess amount has been granted.

8. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials on record.

9. The factum of injury and disability at 65% is not disputed, the only dispute is that methodology adopted by the Medical Board in distributing the disability percentage under different heads. I find that the Tribunal has rightly taken note of loss of future prospects and awarded compensation and the compensation under the pecuniary damages at Rs.13,16,250/- has been granted which includes loss of future earning capacity also. Hence I find no justification in enhancing the compensation under that head. It is no doubt true that the details of injury at Paragraph No.11 would make it very clear that the claimant suffered injuries and he is unable to do his day-to-day affairs, his disability is permanent and he was unable to stand long, sit in cross leg, unable to ride motorcycle, losing strength and balance on the left leg and severe pain while moving his left leg and totally his movement is restricted. The claimant being a Mazon, due to this disability, he could not continue his work and hence this Court is of the view that the Tribunal awarded compensation under



various other heads appears to be very nominal compensation enhancement in those heads. Hence, this Court is of the view that the Tribunal grant of compensation under Pecuniary damages is perfectly correct but awarding compensation under the Transportation, Attender charges & Loss of income for during the course of treatment for three months needs to be enhanced and hence the compensation granted by the Tribunal so modified. Thus, the compensation granted 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
	Non-pecuniary damages			
1.	Pain and suffering	50,000/-	50,000/-	confirmed
2.	Extra Nourishment	5,000/-	20,000/-	enhanced
3.	Compensation for pecuniary damages for partial disability	13,16,250/-	13,16,250/-	confirmed
4.	Medical expenses	1,63,000/-	1,63,000/-	confirmed
5.	Transportation	10,000/-	20,000/-	enhanced
6.	Attender charges	8,000/-	30,000/-	enhanced
7.	Loss of income for during the course of treatment for three months @ Rs.9,000/-	Rs.27,000/-	For six months 54,000/-	enhanced
	Total	15,79,250/- Rounded off to Rs.15,80,000/-	16,53,250/-	Enhanced by Rs.74,000/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,79,250/- is hereby enhanced to Rs.74,000/- with interest and costs. The 2nd respondent-Insurance Company is directed to



deposit the enhanced award amount, with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

dpq
To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr. J. Michael Visuvasam, Advocate sr 42926
+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 42502.

C.M.A.No.3885 of 2019

RR(CO)
SP(14/02/2022)