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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4319 of 2019

V. Prabakaran

.. Appellant/Petitioner

Vs.

1.P.Govindarajan

2.TATA AIG General Insurance Co. Ltd.,
2nd Floor, Samsun Towers, Egmore,
Chennai 600 008.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.08.2019, made in M.C.O.P. No.2972 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Cuddalore.

For Appellant : Mr.S.Udayakumar

For Respondents: No appearance (For R1)

Mr.J.Michael Visuvasam (For R2)

J U D G M E N T

This appeal has been filed for enhancement of compensation granted by the award dated 09.08.2019, made in M.C.O.P. No.2972 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Cuddalore.

2.The appellant-claimant filed M.C.O.P. No.2972 of 2016, on the file of the Chief Judicial Magistrate, (Motor Accident Claims Tribunal) Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.06.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.1,22,000/- as compensation to the appellant at the first instance and recover



the same from the 1st respondent.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.08.2019, made in M.C.O.P. No.2972 of 2016, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant suffered injuries like fractures on leg and multiple injuries all over the body and has taken treatment as in-patient at Government Hospital, Panruti, Cuddalore. The appellant was aged 21 years, working as a Labour Coolie & Loadman at Fruits' shop, Panruti and was earning a sum of Rs.20,000/- per month. The Tribunal without considering the age and injuries sustained by the appellant, granted only meagre amount as compensation. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability. The amounts granted by the Tribunal towards pain and suffering, transportation and loss of comfort are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any material evidence to prove the avocation and income, the Tribunal fixed monthly income of the appellant at Rs.8,000/- and awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. Heard through video conference the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

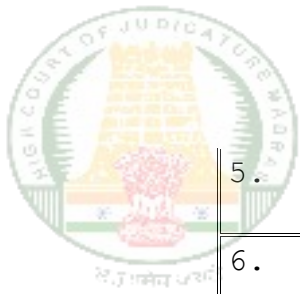
9. From the materials on record, it is seen that it is the contention of the appellant that in the accident he suffered multiple injuries and two fractures and has taken treatment as in-patient at the Indira Gandhi Government General Hospital, Puducherry. He was referred to the District Medical Board. The Medical Board assessed the appellant and certified that the appellant suffered 12% disability. The Tribunal on perusal of the nature of injuries and disability certificate issued by the Medical Board, marked as Ex.C1, granted a sum of Rs.36,000/- towards disability at the rate of Rs.3,000/- per percentage. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa 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 raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.60,000/- [Rs.5,000/- x 12%], at the rate of Rs.5,000/- per percentage for 12% disability. The Tribunal failed to award any amount towards attendant charges. Considering the treatment taken by the appellant at Hospital, a sum of Rs.10,000/- is granted for attendant charges. The amounts awarded by the Tribunal towards extra nourishment and damage to clothes are meagre. Considering the nature of injuries suffered by the appellant, the same are enhanced to Rs.10,000/- and Rs.2,000/- respectively.

10.It is the contention of the appellant that at the time of accident, he was working as a Labour Coolie and Load man at Fruits' Shop, Panruti and was earning a sum of Rs.20,000/- per month. He failed to prove the same. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a meagre sum of Rs.8,000/- per month as notional income. The accident is of the year 2016. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.14,000/- per month is fixed as notional income. Due to the injuries, the appellant would not have worked atleast for a period of five months. Thus, the compensation granted by the Tribunal towards loss of income is modified to Rs.70,000/- [Rs.14,000/- x 5 months]. 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	36,000/-	60,000/-	Enhanced
2.	Pain and suffering	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed



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5.	Damage to clothes	1,000/-	2,000/-	Enhanced
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of income	40,000/-	70,000/-	Enhanced
8.	Loss of comfort	10,000/-	10,000/-	Confirmed
	Total	1,22,000/-	1,92,000/-	Enhanced by Rs.70,000 /-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,22,000/- is enhanced to Rs.1,92,000/- 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, 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.2972 of 2016, at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Cuddalore.

+lcc to Mr.S.Udayakumar, Advocate, S.R.No.8861

+lcc to Mr.J.Michael Visuvasam, Advocate, S.R.No.8888

C.M.A.No.4319 of 2019

GMR(CO)

CB(15/09/2021)