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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4831 of 2019

Subash .. Appellant/Petitioner

Vs.

1.K.Radhakrishnan

2.P.Chandrasekaran

3.The New India Assurance Company Limited,
2nd Floor, Ram Complex,
29, Paramathi Road,
Namakkal.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2018 made in M.C.O.P.No.16 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Perundurai.

For Appellant : Mrs.N.Premalatha
for Mr.R.Nalliyappan

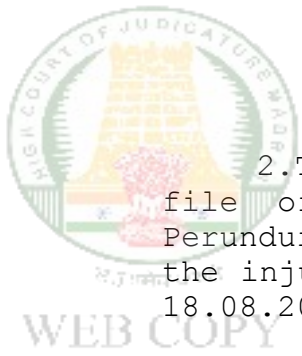
For Respondents : No Appearance (For R1 & R2)

Mr.J.Chandran (For R3)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 28.04.2018 made in M.C.O.P.No.16 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Perundurai.



2.The appellant-claimant filed M.C.O.P.No.16 of 2017, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Perundurai, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.08.2016

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 1st respondent, driver of the Eicher Van owned by the 2nd respondent and directed the 3rd respondent as insurer of the Eicher Van to pay a sum of Rs.22,15,520/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 28.04.2018 made in M.C.O.P.No.16 of 2017, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained communitated fracture of right leg tibia and fibula, right knee dislocation, fracture of pettalla bone, rupture of pettala tissues. At the time of accident, he was a B.E. (Mechanical Engineering) Final Year student in a reputed College. Due to the injuries suffered, he could not write his final year examination and his entire life is affected. The Tribunal considering the same, ought to have fixed the functional disability of the appellant as 100%, instead of fixing at 58% and awarding meagre amount towards compensation. The monthly income of Rs.9,000/- fixed by the Tribunal is meagre. For the injuries suffered in the accident, the appellant is taking treatment continuously as in-patient and out patient. He has undergone several surgeries for implanting plate in the leg, fixing iron rod, for removal of infected and septic skin and tissues, tissue grafting, skin grafting, bone grafting and suffered pain during the course of treatment. The amounts awarded by the Tribunal towards pain and suffering is meagre. Due to the injuries suffered in the accident, the appellant is not able to sit, stand or walk freely and for entire life he has to depend on others. In such circumstances, the Tribunal ought to have awarded more compensation towards loss of income and future medical expenses. The Tribunal erred in not awarding any amount towards loss of marital prospects and loss of amenities. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant has not proved that due to the injuries suffered in the accident, he



could not complete his studies and could not get decent job and reasonable income. In the absence of materials, the Tribunal fixed a sum of Rs.9,000/- per month as notional income, adopted multiplier method and granted compensation for 58% disability, accepting the disability certificate issued by P.W.4 Doctor. The total compensation awarded by the Tribunal is 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 respondents 1 and 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 3rd respondent-Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that at the time of accident, the appellant was studying final year B.E. Mechanical Engineering in Suriya Engineering College, Vijayamangalam. In the accident, he suffered fracture in his leg, grievous injuries in his stomach and has taken treatment as in-patient at K.M.C.H, Kovai in two different spells viz., from 13.08.2016 to 06.09.2016, for a period of 25 days and from 15.11.2016 to 21.11.2016, for a period of 7 days and underwent surgeries and skin grafting, tissue grafting and bone grafting were done. The appellant examined two Doctors as P.W.3 and P.W.4. P.W.4 Doctor examined the appellant and certified that the appellant suffered 58% disability and deposed that education of the appellant was affected due to the injuries and disability. The Tribunal considered the evidence of P.W.3 and P.W.4 Doctors and accepting the disability certificate issued by P.W.4 Doctor, applied multiplier method. The Tribunal fixed a sum of Rs.9,000/- per month as notional income of the appellant. The accident is of the year 2016. The appellant being a Mechanical Engineering student, after completing his studies, he would have got decent job and earned money with good salary. Considering the same and the date of accident, the monthly income of the appellant fixed by the Tribunal is meagre and the same is enhanced to Rs.14,000/-, including future prospects. The appellant has not filed any document or let in any evidence to show that he is completely disabled and could not get any job. In view of the same, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have granted compensation for 100% disability is not acceptable. The Tribunal, considering the age of the appellant as 21 years, rightly applied multiplier '18'. Hence, fixing the monthly income at Rs.14,000/-, applying the multiplier '18', the amount

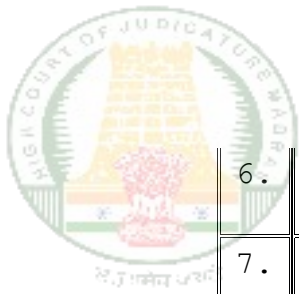


awarded by the Tribunal towards 58% permanent disability is modified to Rs.17,53,920/- [Rs.14,000/- x 12 x 18 x 58%].

10. From the award of the Tribunal, it is seen that the Tribunal has awarded only a meagre sum of Rs.50,000/- towards transportation, extra nourishment and attendant charges together. Considering the injuries suffered and the period of treatment taken, the same is enhanced to Rs.1,00,000/-. As far as the future medical expenses is concerned, the appellant claimed a sum of Rs.5,00,000/- towards future medical expenses and filed a Ex.P15 to prove the same. The Tribunal rejected Ex.P.15, as the appellant has not examined the Doctor who issued the said document and granted Rs.2,00,000/- for future medical expenses. The Tribunal failed to award any amount for loss of marital prospects. Considering the nature of injuries, the appellant is entitled to a sum of Rs.1,00,000/- towards loss of marital prospects. This Court is of the considered view that the amount granted by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

11. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Permanent disability	11,27,520/-	17,53,920/-	Enhanced
2.	Transportation, extra nourishment and attendant charges	50,000/-	1,00,000/-	Enhanced
3.	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
4.	Future prospects	1,00,000/-	1,00,000/-	Confirmed
5.	Medical expenses	6,38,000/-	6,38,000/-	Confirmed



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6.	Future medical expenses	2,00,000/-	2,00,000/-	Confirmed
7.	Loss of marital prospects	-	1,00,000/-	Granted
	Total	22,15,520/-	29,91,920/-	Enhanced by Rs.7,76,400/-

12. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.22,15,520/- is enhanced to Rs.29,91,920/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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.16 of 2017. 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.7,76,400/-, enhanced by this Court as per the order of this Court dated 12.12.2019, made in C.M.P.No.26413 of 2019 in C.M.A. SR.152284 of 2019. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Perundurai.

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

+1CC to Mr.J.Chandran, Advocate, Sr.No.17526

C.M.A.No.4831 of 2019

VBM (CO)

K.RK. (15.11.2021)