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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.M.A.NO. 276 OF 2022

Venkatacalam

...Appellant/
Petitioner

Vs

1. Rajendran

2. The Oriental Insurance Co., Ltd.,
13/142, Alakkara Thottam, Mottur,
Edanganasalai Peruratchi, Salem - 637 502.
Branch Office: Mettur Road, Parimalam Complex,
EVN Road, Erode - 638 001.

3. Prakasam

... Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair order dated 05.10.2020 made in M.C.O.P.No.423 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

For Appellant : Mr.C.Paraneedharan

For Respondents 1 & 3 : Not Ready in notice

For Respondent 2 : Mr.K.Vinod

JUDGEMENT

The claimant is before this Court seeking enhancement of the award granted by the Tribunal below as being totally inadequate and not commensurate to the injuries sustained by the appellant and the treatment that he is now undergoing. The facts in brief are as follows.



2. The appellant who is represented by his wife had met with an accident on 10.07.2016 at about 6.30 in the evening while returning from his work. The appellant was on his Bajaj motor cycle bearing Registration No.TDM 2126, when he was idling the vehicle opposite to Vattamalai JKK Nataraj College, the 3rd respondent coming in Omni Car bearing Registration No. TN 22 X 2017, belonging to the 1st respondent and driving it in a rash and negligent manner in the same direction as the appellant, dashed the appellant's two wheeler as a result of which the appellant had fallen down and sustained grievous injuries.

3. The appellant was immediately taken to the Government Hospital at Komarapalayam and thereafter shifted to Sudha Hospital, Erode and Kovai Medical Centre, Coimbatore, where he was in patient for a month.

4. It is the case of the appellant that he was working as a Watchman in a Private Paper Board Company and earning a sum of Rs.15,000/- per month. The accident occurred only on account of rash and negligent driving of the 3rd respondent. Therefore, the appellant claimed a compensation of Rs.25,00,000/-.

5. The 1st respondent remained ex parte and the 3rd respondent who had entered appearance had not filed a counter. The Insurance Company alone contested the petition.

6. It is the case of the Insurance Company that the 1st respondent had not cooperated with the investigation conducted by the 2nd respondent Insurance Company and had also not cooperated in contesting the claim. Therefore, the 2nd respondent had sought leave of the Court to raise all the defense available to the insurer under Section 170 of the Motor Vehicles Act.

7. The Insurance Company would submit that the Insurance Company of the Bajaj Motor cycle also be impleaded and therefore the claim is bad for non-joinder of necessary parties.

8. The Tribunal below taking into account Ex.P.1 (FIR), Ex.P.5 (Rough sketch) etc., held that the accident had occurred only on account of the rash and negligent driving of the 3rd respondent and there has been no rebuttable evidence with reference to the above.



9. The Tribunal had also gone on to hold that the 2nd respondent Insurance Company is liable to compensate the appellant. The Tribunal took into account the fact that though the appellant had pleaded that he was working as a Watchman in Private Paper Board Company and earning a sum of Rs.15,000/- per month, he had not produced any document to corroborate the same. Therefore, the notional income of Rs.6,500/- was taken. The Tribunal had also taken into account Ex.P.10, Ex.P.11 and Ex.P.12, (Discharge Summary) and Ex.P.9, (Wound Certificate) to hold that the appellant would have lost his income for at least 8 months and awarded a sum of Rs.52,000/- under this head.

10. The Tribunal had relied on Ex.C1, Report of the Medical Board to assess the disability at 59%. The Tribunal has finally awarded a sum of Rs.18,14,000/-.

11. Challenging the award the appellant is before this Court.

12. Mr.C.Paraneedharan, learned counsel appearing on behalf of the appellant would submit that the Medical Board after taking into account the records relating to the earlier treatment arrived at a disability of 59%. He would submit that by reason of the accident, the appellant has suffered a cognitive impairment and difficult ambulation, which clearly showed the extent of disability and the disability has definitely deprived the appellant of further employment.

13. The learned counsel would submit that the documents have been filed to show the treatment that the appellant has undergone by filing Ex.P.10, Ex.P.11 and Ex.P.12. All of which would go to show the nature of the injuries and the treatment undergone by the appellant. He would submit that the Tribunal below has totally erred in taking notional income of just Rs.6,500/- for an injury sustained in an accident that had taken place in the year 2016.

14. That apart, the appellant's wife who has adduced evidence as P.W.1 has stated that the appellant was working as a Watchman and this fact has not been disputed by the respondents. Therefore, the notional income of Rs.15,000/- as pleaded ought to have taken into account. The learned counsel would submit that the appellant is continuing to undergo treatment and no amounts under the head of future Medical Expenses has been awarded to the appellant. Therefore, the award required a



revision and enhancement.

15. Per contra, Mr.K.Vinod, appearing on behalf of the 2nd respondent Insurance Company would submit that though the appellant had come forward with a contention that he was working as a Watchman in Private Paper Board Company, he has not marked any document to prove the same and therefore the Tribunal has adopted a notional income which cannot be found fault with especially when the appellant is not sought to prove his contention that he earned a sum of Rs.15,000/-.

16. The learned counsel would submit that the entire medical expenses incurred has been reimbursed. With reference to the argument of the learned counsel for the appellant that the disability has to be assessed at 59%, he would submit that the Tribunal has committed an error in taking the entire disability of 59% for arriving at the compensation under the head of Permanent Disability.

17. The learned counsel would further submit that there is a major calculation error in Clause 9 of the compensation awarded since the amount that is payable as per calculation adopted by the Tribunal is only a sum of Rs.3,22,140/-, whereas Rs.5,46,000/- has been shown. He would therefore submit that the compensation that has been arrived at appeared to be unfair.

18. Heard the learned counsel and perused the records.

19. A perusal of Ex.P.10, Ex.P.11, Ex.P.12 and Ex.C.1 would show that by reason of the fall due to the accident, the appellant had sustained severe Head injuries, as a result he has lost his consciousness and the Discharge Summary would show that the appellant has suffered Vomiting and Seizures. The appellant is reported to have Right Acetabular, Pelvic, Left Scapular fracture with Multiple Rib Fractures. He was admitted into the Kovai Medical Centre and Hospital Limited, Coimbatore on the date of the accident i.e., on 10.07.2016 and was there as an inpatient nearly for a month and discharged on 08.08.2016.

20. Thereafter, the appellant has been once again admitted on 10.10.2016 and discharged on 20.10.2016, since he had some complications after the earlier surgery. Thereafter, the appellant has been admitted to the Senthil Multi Speciality Hospital, Erode on 15.05.2017 and was in the Hospital till 18.05.2017. He had a surgery once again done.



21. The Medical Board's report would show that he has suffered a Cognitive Impairment and Difficult Ambulation. He has suffered injuries to the Head, Eyes, Faciomaxillary Injury, Chest Injury, Pelvic Injuries, etc.,

22. The appellant is also represented by his wife since he is unable to appear before the Court and adduce evidence which would show the extent of the disability that has been suffered by the appellant. The Tribunal has taken a very meagre notional income totally overlooking the date of the accident and the disability that the appellant has sustained. Therefore, this Court is of the view that the notional income should be enhanced to a sum of Rs.12,000/-. Therefore, the amount under the head of Permanent Disability and Loss of Earning Power would be a sum of Rs.5,94,720/-.

Rs.12,000/- X 12 X 7 X 59%.

23. Further, the appellant has been in and out of the Hospital. Therefore, under the head of Extra Nourishment another sum of Rs.10,000/- be given. That apart, the attender charges has to be increased to a sum of Rs.25,000/-. The Tribunal below has not granted any amount under the head of Future Medical Expenses. The report would indicate that the appellant has to undergo periodic examinations. Therefore, a sum of Rs.50,000/- is granted under the head of Future Medical Expenses.

24. Consequently, the modified award would be as follows:

Heading	Amount
Transport to Hospital	Rs.15,000/-
Extra Nourishment	Rs.20,000/-
Attender Charges	Rs.25,000/-
Future Medical Expenses	Rs.50,000/-
Damages for Clothes and Articles	Rs.3,000/-
Medical Expenses	Rs.11,40,000/-
Pain and Sufferings	Rs.80,000/-
Permanent Disability & Loss of Earning Power	Rs.5,94,720/-
Total	Rs.19,27,720/-



The Tribunal has erred in granting interest at 9%, which is reduced to 7.5% per annum.

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25. The appellant is directed to pay the Court fee for the enhanced compensation amount, if required. The Insurance Company is directed to deposit the entire award amount within a period of 6 weeks from the date of receipt of a copy of this order. The appellant is permitted to withdraw the entire award amount. The appellant shall show proof of payment of the Court fees and only on such proof he shall be permitted to withdraw the amounts deposited.

26. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Special Subordinate Judge,
Motor Vehicle Accident Claims Tribunal,
Erode.

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.25620

C.M.A.No. 276 of 2022

SSD(CO)
PM/23/05/2022