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C.M.A.No.1747 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1747 of 2018
and
C.M.P.No.16412 of 2019

M.Koteeswaran

.. Appellant

Versus

1.M.Rengaraj
2.G.Kannan

3.The Oriental Insurance Company Limited,
Divisional Office, A.A.Complex,
D.No.159-Kumaran Road, Tiruppur.

.. Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2017 made in M.C.O.P.No.900 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Tiruppur at Dharapuram.

For Appellant : Mr.M.Lokesh
For RR 1 & 2 : Ex-parte
For R3 : Mr.K.Vinod

JUDGMENT

Not being satisfied with the award dated 12.07.2014 passed in M.C.O.P.No.900 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Tiruppur at Dharapuram, the claimant

is before this Court with this appeal seeking for enhancement of compensation.



C.M.A.No.1747 of 2018

WEB COPY

2. The appellant herein has filed M.C.O.P.No.900 of 2014 before the Motor Accidents Claims Tribunal, III Additional District cum Sessions Court, Tiruppur at Dharapuram claiming a total sum of Rs.30,00,000/- as compensation. According to the claimant, on 12.07.2014 at about 01.50 p.m., when he was driving the motorcycle bearing Registration No.TN-38-AX-0669 towards Kangayan to Tirupur main road, near a place called Golden bakery he attempted to take a right turn. At that time, the car belonged to the 1st respondent bearing Registration No.TN-39-AS-9039 was driven by its driver in a rash and negligent manner and hit the claimant. In the impact, the claimant suffered severe injuries and he was taken to Government Hospital, Kangayam, from where he was taken to Bharani Hospital, Erode. During the course of treatment, his right leg below knee was amputated. He was admitted as in-patient for about 45 days and even after his discharge, he had permanent pain in his right shoulder. At the time of accident, he was 29 years old and was earning a sum of Rs.10,000/- per month by taking up Electrical Work. Therefore, the claim petition was filed as against the driver, owner and insurer of the car.

3. The claim petition was resisted by the appellant / Insurance Company by contending that it was the claimant who had driven the two-wheeler negligently which caused the accident and therefore, the Insurance



C.M.A.No.1747 of 2018

Company cannot be mulcted with any liability to pay compensation to him.

The Insurance Company also denied the age, income and other particulars furnished in the claim petition and prayed for dismissal of the same.

4. Before, the Tribunal, the claimant examined himself as P.W.1 and Dr.Innocent as P.W.2 and Exs.P1 to P15 were marked on his side. On the side of the respondents, neither any document was marked nor witnesses examined.

5. The Tribunal upon analyzing the oral and documentary evidence held that the accident had occurred as a result of negligent driving of the driver of the car owned by the 2nd respondent. As regards quantum, the Tribunal fixed a monthly notional income of the claimant at Rs.8,000/- per month. As P.W.2- Doctor assessed the disability of the claimant at 50%, the Tribunal awarded a sum of Rs.4,000/- per percentage of disability and granted Rs.2,00,000/- towards permanent disability. For loss of income during the period of treatment a sum of Rs.16,000/- was awarded. For pain and sufferings Rs.50,000/- was awarded by the Tribunal. Apart from awarding a sum of Rs.10,000/- towards transportation and extra nourishment each, a total sum of Rs.4,14,024/- was awarded by the Tribunal.



C.M.A.No.1747 of 2018

come forward with this appeal. The appeal was valued at Rs.30,00,000/- and Court paid thereof and it was also allowed by this Court by the order dated 25.07.2019 made in C.M.P.No.15586 of 2019.

7. As against the award passed by the Tribunal, the Insurance Company has not filed any appeal and therefore, this Court is not dealing with the question of liability fastened as against the Insurance Company in this appeal.

8. It is not in dispute that in the accident, the claimant/appellant who was aged 29 years at the time of accident, has suffered amputation of his right leg below knee and fracture in right shoulder. While so, this is a fit case where the Tribunal could have proceeded to award compensation by applying multiplier method. However, the Tribunal grossly erred in awarding compensation by fixing a sum of Rs. 4,000/- per percentage of disability towards permanent liability. Such an approach of the Tribunal, in a case of this nature where the appellant suffered amputation of his right leg below knee, cannot be countenanced. The Tribunal lost sight of the fact that the injuries suffered by the appellant resulted in his functional disability and therefore ought to have resorted to award compensation by adopting multiplier method,



C.M.A.No.1747 of 2018

the appellant cannot be expected to take up any gainful employment and thus it had dented his prospects to earn. Having regard to the above, this Court is of the view that the amount awarded by the Tribunal under the head 'permanent disability' requires modification.

9. The claimant was 29 years old at the time of accident. The accident had taken place on 12.07.2014. Therefore, it is fair and reasonable to fix a sum of Rs.10,000/- as his income and 40% of such income has to be treated as his future prospects. Therefore, if this is considered a sum of Rs.14,000/- can be fixed as the monthly loss of income, notionally. By applying multiplier '17', for 50% of the disability a sum of Rs.14,28,000/- is hereby awarded, which would be the fair and reasonable compensation payable to him under the head 'disability' especially when he had suffered amputation of leg below his knee.

10. For transportation, the Tribunal awarded a sum of Rs.10,000/- besides a Rs.10,000/- towards extra nourishment was awarded, which in the opinion of this Court, are required to be scaled up. Accordingly, a sum of Rs.15,000/- is awarded towards transportation and another sum of Rs.30,000/- towards extra nourishment given the nature of injuries suffered by him.



C.M.A.No.1747 of 2018

11. For pain and sufferings the Tribunal awarded Rs.50,000/- without regard to the fact that the appellant, at his young age, had suffered amputation of his leg below knee. Therefore, this Court is of the definite view that the sum of Rs.50,000/- awarded has to be enhanced to Rs.1,00,000/-.

12. The Tribunal did not award any amount towards loss of amenities and enjoyment as well as attendant charges. Given the totality of facts and circumstances of the case, the Tribunal ought to have awarded compensation under the aforesaid heads. Having regard to the above, a sum of Rs.50,000/- is awarded by this Court towards loss of amenities especially when the appellant suffered amputation of his right leg below knee at the age of 29 years. Similarly, the appellant required attendant charges throughout the rest of his life. Taking note of the above, a further sum of Rs.50,000/- is awarded towards attendant charges.

13. The Tribunal awarded Rs.1,28,024/- towards medical expenses which are based on medical bills and the compensation awarded under this head require no interference.

14. In the light of the above, the amount awarded by the Tribunal at Rs.4,14,024/- is hereby enhanced to Rs.18,17,024/- as mentioned below.



C.M.A.No.1747 of 2018

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	2,00,000/-	14,28,000/-	Enhanced
2.	Loss of income during treatment period	16,000/-	16,000/-	Confirmed
3.	Transportation	10,000/-	15,000/-	Enhanced
4.	Extra nourishment	10,000/-	30,000/-	Enhanced
5.	Medical expenses (as per bills)	1,28,024/-	1,28,024/-	Confirmed
6.	Pain & sufferings	50,000/-	1,00,000/-	Enhanced
7.	Loss of amenities & enjoyment	-	50,000/-	Granted
8.	Attendant charges	-	50,000/-	Granted
	Total	Rs.4,14,024/-	Rs.18,17,024/-	Enhanced by Rs.14,03,000/-

15. In the result, the judgment and decree passed in M.C.O.P.No.900 of 2014 dated 12.12.2017 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Tiruppur at Dharapuram, is modified. This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,14,024/- is hereby enhanced to Rs.18,17,024/- with interest at the rate of 7.5% per annum from the date of filing claim petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any, on the enhanced amount of compensation now determined by this Court. The third respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together



C.M.A.No.1747 of 2018

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 order to the credit of M.C.O.P.No.900 of 2014 dated 12.12.2017 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Tiruppur at Dharapuram. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

05.01.2022

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Index : Yes / No

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C.M.A.No.1747 of 2018

To

- 1.The III Additional District cum Sessions Court,
Motor Accident Claims Tribunal, Tiruppur at Dharapuram.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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C.M.A.No.1747 of 2018

S.KANNAMMAL, J.

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C.M.A.No.1747 of 2018

05.01.2022