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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1876 of 2014

B.Ramachandran

... Appellant/Petitioner

Vs.

1.V.Ignatius David

2.Reliance General Insurance Co. Ltd.

No.23, Spurtank Road

Chennai-31.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2014 made in M.C.O.P.No.1018 of 2010 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R1 : No appearance

For R2 : Ms.C.Bhuvanasundari

J U D G M E N T

(This matter is heard through "Video-Conferencing")

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.01.2014 made in M.C.O.P.No.1018 of 2010 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1018 of 2010 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.01.2010.

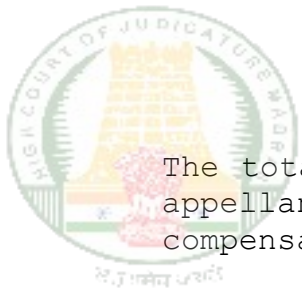


3.The Tribunal considering the pleadings, oral and documentary evidence let in by the appellant, held that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.1,66,700/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered pilon fracture on right ankle and comminuted fracture on both bones lower 1/4th. The appellant examined the Doctor as P.W.2 and marked the disability certificate as Ex.P9 to prove the nature of injuries. P.W.2/Doctor after examining the appellant certified that he suffered 45% disability. The Tribunal without assigning any reason reduced the disability to 40%. After the accident, the appellant could not do the work as he was doing earlier and lost his earning capacity. The Tribunal has not awarded any compensation towards loss of earning power. The appellant was working as a laundry worker and was earning a sum of Rs.6,000/- per month. The Tribunal awarded only a meagre sum of Rs.20,000/- towards loss of earning. The appellant has taken treatment as in-patient in Christudas Orthopedic Specialty Hospital from 14.01.2010 to 20.01.2010, underwent surgery and thereafter, continued his treatment as out-patient. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. The Tribunal ought to have awarded a sum of Rs.36,403/- towards medical expenses as per Ex.P6/medical bills instead of Rs.27,645/-. The appellant is still taking treatment for the injuries and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved his avocation and income. In the absence of any material evidence, the amount awarded by the Tribunal towards loss of earning is not meagre. The appellant has also not proved that due to the injuries, he could not continue his work as laundry worker and lost his earning capacity. Hence, he is not entitled to any compensation towards loss of earning capacity.



The total compensation granted by the Tribunal is excessive. The appellant has not made out any case for enhancement of 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 the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials 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 pilon fracture on right ankle and comminuted fracture on both bones lower 1/4th. The appellant examined the Doctor as P.W.2 and marked the disability certificate as Ex.P9 to prove the nature of injuries. P.W.2/Doctor after examining the appellant certified that he suffered 45% disability. The Tribunal reduced the disability to 40% on the ground that disability assessed by P.W.2/Doctor is on the higher side. The said reasoning is not correct. The appellant is entitled to compensation for 45% disability. The Tribunal has granted only a sum of Rs.2,000/- per percentage of disability. The accident is of the year 2010 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,35,000/- (45% X Rs.3,000/-).

9(i) It is the contention of the appellant that he was a laundry worker at the time of accident and was earning a sum of Rs.6,000/- per month. Due to the injuries, he could not do the work as he was doing earlier. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal awarded a sum of Rs.20,000/- towards loss of earning, which is meagre. The accident is of the year 2010 and hence, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of earning during treatment period is modified to Rs.36,000/- (Rs.6,000/- X 6).

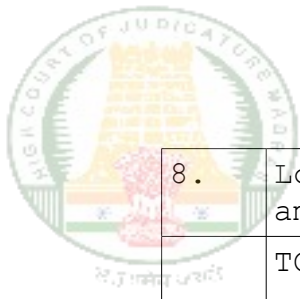
9(ii) The appellant has taken treatment as in-patient in Christudas Orthopedic Specialty Hospital from 14.01.2010 to 20.01.2010, underwent surgery and thereafter, continued his



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treatment as out-patient in the same hospital till 10.09.2012. To prove the same, the appellant has produced Ex.P5/discharge summary and Ex.P4/O.P. treatment records. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering Exs.P4 and P5, Rs.15,000/- each are granted towards attendant charges and loss of amenities. Considering the nature of injuries, period of treatment taken and disability suffered by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are enhanced to Rs.10,000/- each as amounts awarded by the Tribunal are meagre. The appellant claimed that he is entitled to Rs.36,405/- as compensation towards medical expenses. The Tribunal considering in-patient bill in item No.1 for Rs.28,758/-, accepted the payment receipt of Rs.20,000/- and other bills produced, held that receipt for balance amount of Rs.3,000/- alleged to be paid is not filed and awarded a sum of Rs.27,645/- towards medical expenses. Therefore, the appellant is not entitled for any enhancement of compensation towards medical expenses. The appellant has not produced any document to show that he requires future medical expenses and therefore, he is not entitled to any amount towards future medical expenses. The amount awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is 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 or reduced
1.	Loss of earning	20,000	36,000	Enhanced
2.	Transportation	7,000	10,000	Enhanced
3.	Extra nourishment	7,000	10,000	Enhanced
4.	Medical expenses	27,645	27,645	Confirmed
5.	Pain and suffering	25,000	25,000	Confirmed
6.	Disability	80,000	1,35,000	Enhanced
7.	Attendant charges	-	15,000	Granted



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8.	Loss of amenities	-	15,000	Granted
	TOTAL	1,66,645 rounded off to 1,66,700	2,73,645 rounded off to 2,73,700	Enhanced by Rs.1,07,000 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,66,700/- is hereby enhanced to Rs.2,73,700/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is not entitled to any interest for the dismissal of default period from 11.06.2012 to 16.12.2013. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along 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 judgment. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

kj
To

The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

Copy to

The Section Officer
V.R. Section
High Court, Chennai.

+1cc to Mr.B.S.Padmanabhan, Advocate Sr.934

C.M.A.No.1876 of 2014

jpl[col]
srg 09/02/2022