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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.372 of 2014

V.Anandan @ Anbuselvan

... Appellant/Petitioner

Vs.

1.M.Senthil Kumar

2.M/s.New India Insurance Company Limited,
No.2, Main Road, Dindugal.

3.C.Satheesh Kumar

... Respondents/Respondents

(The 1st & 3rd Respondents are having been called absent, set exparte before the trail Court; hence notice may be dispensed with)

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree passed in MCOP No.504 of 2002 dated 06.11.2009 on the file of MACT/Principal District Court at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.R.Sivakumar for R2
Notice unserved for R1 and R3

JUDGMENT

The claimant in MCOP No.504 of 2002 on the file of the Motor Accident Claims Tribunal/Principal District Court, Namakkal is the appellant herein. Aggrieved by the quantum of compensation granted by the judgment dated 06.11.2009, the claimant has filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.



2. Heard Mr.Ma.P.Thangavel, learned counsel for the appellant and Mr.R.Sivakumar, learned counsel for the second respondent/New India Assurance Company Limited. Notice sent by this Court to R1 and R3 were returned unserved and respondents No.1 and 3 had remained ex parte before the Tribunal and there is no representation on behalf of them before this Court also.

3. A perusal of the records shows that the accident, necessitating filing of the claim petition, had taken place on 16.02.2002 at about 5:30 hours, when the petitioner was going in his bicycle to his agricultural field for the purpose of irrigation, in fact, he went to gather the agricultural labourers to do the necessary agricultural work on the extreme left side of the road. At that time, the 1st respondent's vehicle Maruthi car bearing Reg.No.TN 58 3993 driven by his driver in a rash and negligent manner, hit the claimant while overtaking a lorry carrying river sand and the car ran over the right leg of the claimant, as a result of which, the petitioner sustained crush injury and also minor bruises all over the body. The petitioner was immediately taken to Aravinth Nursing Home, Namakkal by a car and was admitted in the hospital. The Medical Officer advised the petitioner that his right leg has to be amputated and accordingly the leg was amputated. The petitioner has spent more than Rs.1,50,000/- for his medical treatment and he could not perform his only known profession of agriculture. He can no more carry out his agricultural pursuits as he cannot get into the land with one leg. Alleging that the accident took place due to the rash and negligent driving of the driver of the lorry, the claimant claimed Rs.10,00,000/- as compensation. However, the Tribunal has awarded a compensation under certain heads for a sum of Rs.1,87,000/-, but erroneously mentioned in decree as Rs.1,95,000/-.

4. The learned counsel appearing for the appellant contended that since the amount awarded by the Tribunal is meager on all the heads, the claimant is entitled for higher compensation. He would further contend that at the time of accident, the injured was 35 years and was hale and healthy. Further, the claimant suffered 80 % disability, but the Tribunal has fixed the disability at 60% and granted a sum of Rs.1,20,000/- under the head permanent disability. In order to prove the disability of the claimant, Ex.P.7 (Disability Certificate) has been marked before the Tribunal. Therefore, he prays for awarding just and reasonable compensation for future treatment including cost of artificial leg which require periodical replacement.

5. Per contra, the learned counsel appearing for the 2nd respondent Insurance Company submitted that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this



Civil Miscellaneous Appeal is liable to be dismissed and no enhancement is necessary.

6. Before the Tribunal, the petitioner examined himself as P.W.1, examined one Govindaraj (P.W.2) as eye witness and Dr.Mani as P.W.3 and marked 8 Documents as Exs.P1 to P8.

7. This Court carefully considered the submissions of the learned counsel for the appellant/claimant and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

8.The claimant aged about 35 years is an agriculturist and earning a sum of Rs.6000 /- per mensem. Due to the accident, which took place on 16.02.2002, he suffered permanent disability. The disability was assessed by the Doctor as 80% and disability certificate (Ex.P7) was also issued to that effect. However, the Tribunal took into consideration only 60% disability and granted a sum of Rs.2,000/- towards per percentage of disability and awarded Rs.1,20,000/- under the head "Permanent Disability". In the present case, the physical disability resulted in loss of leg. The appellant who is a farmer had suffered disability which is of 80% will definitely affects his earning capacity. In such circumstances, scaling down the percentage of disability by the Tribunal is not acceptable. Since the damages on account of amputation of leg resulted in 80% disability, this Court is of the view that the compensation granted by the Tribunal is not adequate even under other heads. Accordingly, under the head "Permanent Disability", this Court is inclined to recompute 80% disability, then the compensation awarded under the head of Permanent Disability would come to Rs.1,60,000/-. Therefore, disability of the claimant is fixed at 80% and a sum of Rs.1,60,000/- is awarded under the head 'Permanent Disability'. Further, the Tribunal has awarded only a sum of Rs.20,000/- under the head 'Pain and Suffering'. This Court feels that an enhancement by Rs.60,000/- would be a just and reasonable compensation under the said head. Accordingly, a sum of Rs.80,000/- is awarded under the head 'Pain and Sufferings'. Further, the Tribunal has awarded only a sum of Rs.5,000/- under the head 'Extra Nourishment'. This Court feels that an enhancement by Rs.20,000/- would be a just and reasonable compensation under the said head. Accordingly, a sum of Rs.25,000/- is awarded under the head 'Extra Nourishment'. Further, the Tribunal has awarded only a sum of Rs.5,000/- under the head 'Transportation'. This Court feels that an enhancement by Rs.15,000/- would be a just and reasonable compensation under the said head. Accordingly, a sum of Rs.20,000/- is awarded under the head 'Transportation'. The appellant/claimant suffered disability to the extent of 80%



from amputation of his leg on the ground of disability. Therefore, this Court feels to grant a sum of Rs.1,35,000/- as compensation under the head 'Artificial leg' and Rs.50,000/- under the head 'Future Medical Expenses'. However, the compensation awarded under the head "Medical Expenses" and "Loss of Income" during the treatment period is just and reasonable and the same is confirmed. Hence, the compensation awarded by the Tribunal to the appellant/claimant is re-quantified as follows:-

Heads	Amount awarded by the Tribunal Rs.	Amount modified/ awarded by this Court	Award confirmed or enhanced or granted
Permanent Disability	2000 x 60% 1,20,000/-	2000 x 80% 1,60,00/-	Enhanced
Transport to Hospital	5,000/-	20,000/-	Enhanced
Extra Nourishment	20,000/-	25,000/-	Enhanced
Medical expenses	35,000/-	35,000/-	Confirmed
Pain and Sufferings	20,000/-	80,000/-	Enhanced
Loss of income	2000/-	2,000/-	Confirmed
Artificial leg	-	1,35,000/-	Granted
Future Medical Expenses	-	50,000/-	Granted
Total	1,87,000/-	5,07,000/-	Enhanced by Rs.3,20,000/-

9. The total compensation is thus enhanced to Rs.5,07,000/- from Rs.1,87,000/-.

10. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to pay the enhanced compensation of Rs.5,07,000/- (Rupees Five Lakhs and seven thousand only) with accrued interest at 7.5% per annum from the date of filing of petition till the date of realisation excluding the periods from 09.06.2005 to 09.01.2009 and 18.06.2009 to 28.07.2009 with costs, less the amount already deposited, if any, within a



period of eight (8) weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Principal District Judge,
MACT/Principal District Court at Namakkal
2. The Section Officer, V.R.Section,
Madras High Court, Chennai.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.20507

C.M.A.No.372 of 2014

GSM(CO)
CT 10/06/2022