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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.669 of 2021

N.Rajkumar ... Appellant

- Vs -

1. S.Parthiban

2. The Oriental Insurance Co. Ltd.

No.115/216, Prakasam Street

Broadway, Chennai - 1.

... Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, to enhance the amount awarded in MCOP No.4337/2012 dt. 16.08.2019 on the file of Motor Accident Claims Tribunal (Small Causes Court Special Sub Judge No.1) Chennai

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Chandran R2

No appearance - R1

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of compensation in MCOP No.4337/2012 dt. 16.08.2019 on the file of Motor Accident Claims Tribunal (Small Causes Court Special Sub Judge No.1) Chennai.



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2. It is the case of the appellant/claimant that on 23.04.2012 at about 4.00 p.m., when the appellant/claimant was driving his auto bearing Registration No.TN 32 Q 9381, at that time, the tractor bearing reg. No.TN 27 Q 0091, owned by the first respondent and insured with the second respondent, driven by its driver, in a rash and negligent manner, dashed from behind the auto. Due to the said accident, the appellant sustained grievous injuries. Thereafter, the appellant has filed a claim petition before the Tribunal, claiming a sum of Rs.20,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, on the side of the appellant, three witnesses were examined and marked as many as 25 documents viz., Exs.P1 to P25. On the side of the respondents, one witness was examined and four documents were adduced.

4. After analyzing the oral and documentary evidences, the Tribunal has awarded a sum of Rs.4,12,572/- as compensation payable by the insurance company.

5. Not being satisfied with the quantum of compensation awarded by

the Tribunal, the appellant has come forward with this appeal before this



Court.

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6. Learned counsel for the appellant submitted that the appellant was earning a sum of Rs.15,000/- per month whereas the Tribunal has fixed the income of the injured is only Rs.6,500/- which is meager. The Doctor, who treated the appellant, has assessed the disability at 60% as permanent disability as he could not do his day to day work properly, but the Tribunal has awarded a sum of Rs.1,80,000/- towards disability, which is very low. Further the Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering, which has to be enhanced. Hence, the learned counsel for the appellant prays for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent /Insurance Company submitted that the respondent has denied all the averments made by the appellant in the claim petition and filed a counter to that effect. The learned counsel further submitted that the accident had occurred due to the rash and negligent driving of the driver cum owner of the tractor. Therefore, the first respondent is liable to pay the award amount. Without considering the same, the Tribunal has fixed the liability as against the second respondent, which is erroneous. The Tribunal has awarded a sum of Rs.4,12,572/- which is highly excessive and there is no basis for



awarding such compensation. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the respondents and also perused the available materials on record before this Court.

9. Admittedly, the accident had happened in the year 2012. It is not disputed that the accident had occurred only due to the rash and negligent driving of the driver cum owner of the tractor. On careful reading of the records, it is found that the Tribunal has fixed the income of the injured at Rs.6,500/- per month. Considering the nature of injuries sustained by the appellant, the Doctor has assessed the disability at 60% as permanent disability. However, it is to be pointed out that though the Doctor has fixed the disability at 60%, however, the same is assessed as partial permanent disability. Therefore, this Court in the nature of permanent disability, is inclined to fix the same at 25%. The only grievance is with regard to the method to be adopted.

A careful perusal of the injuries sustained and the disability, it is

evident that the disability is permanent in nature, which would hinder the



earning capacity of the injured. Therefore, necessarily, the Tribunal ought to have adopted multiplier method. Further, the Tribunal had fixed the notional income at Rs.6,500/-, however, considering the avocation of the injured, this Court is of the considered view that the notional income could be safely fixed at Rs.10,000/-. Accordingly, fixing the notional income at Rs.10,000/- and adopting the multiplier of "15" multiplier as per the ratio laid down by the Supreme Court compensation towards disability is quantified as follows:

$$10,000/- + 40\% \text{ (future prospects)} = 4000/-$$

$$10,000/- + \text{Rs.}4000/- = 14,000/- \times 12 \text{ months} \times "15" \times 25\%$$

$$= \text{Rs.}6,30,000/-$$

Considering the injuries sustained by the appellant, this Court is inclined to enhance a sum of Rs.50,000/- towards pain and sufferings. In view of the compensation granted under the head disability, the compensation under the heads viz., loss of future prospects and loss of earnings awarded by the Tribunal are set aside by this Court. The compensation awarded under the other heads by the Tribunal is confirmed which does not warrant any interference.

The award of compensation is modified under the following heads :-



Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Disability	1,80,000/-	6,30,000/-
2	Pain and sufferings	30,000	50,000
3	Transportation	10,000	10,000
4	Medical expenses	32,572	32,572
5	Attender charges	30,000	30,000
6	Loss of earnings	52,000	
7	Loss of future prospects	50,000	
	Total	4,12,572/-	7,52,572/-

11. In the result, the appeal is allowed. However, there shall be no order as to costs. The second respondent is directed to deposit the award amount of Rs.7,52,572/- rounded off to **Rs.7,52,600/-** along with interest at 7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal is directed to transfer the same to the bank account of the appellant / claimant through RTGS within a period of two weeks thereafter.

15.12.2023

Index : Yes/no

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M.DHANDAPANI.,J.

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To

The Motor Accident Claims Tribunal,
(Small Causes Court Special Sub Judge No.1) Chennai.

C.M.A.No.669 of 2021

15.12.2019