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C.M.A. No.2598 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2598 of 2021

K.Rajamani

.

.. Appellant / Petitioner

Vs.

1. S. Jayaraj
2. Reliance General Insurance Company,
Reliance House,
R.O. Legal Department,
6th Floor, Haddows Road,
Nungambakkam,
Chennai – 600 006.

... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 27.11.2018 passed in M.C.O.P. No.8738 of 2015 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr. Amar D. Pandiya
For R1	:	No appearance
For R2	:	M/s. Bhuvanasundari



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.8738 of 2015, dated 27.11.2018 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of this appeal is as follows:
The appellant herein had suffered disability in the accident taken place on 10.11.2015 at about 14.45 hours while he was riding a two-wheeler bearing Registration No.TN 11 D 9837 on the Vandalore to Kelambakkam main road, near Unnamachery Junction. The driver of the first respondent's car bearing Registration No.TN 10 AD 9192 has driven it in rash and negligent manner and hit on the two-wheeler which resulted in, causing severe injuries. Hence the claimant has come forward with the claim petition seeking compensation for a sum of Rs.29,00,000/- against the owner of the vehicle, who is the first respondent and against the insurer of the car-



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Respondent No.2.

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4. The owner of the vehicle has not contested the claim and was remained ex-parte. The second respondent filed counter and contended that the accident has not occurred due to rash and negligent driving of the car driver and the claimant shall prove his age, avocation, income, injury and disability sustained and also the medical expenses incurred.

5. The Tribunal after considering the evidences placed on record has held that the driver of the first respondent's vehicle is a tortfeasor and the respondents are liable to pay the compensation for a sum of Rs.11,41,500/- to the claimants.

6. Aggrieved over the quantum of compensation awarded, the claimant has approached this Court by way of appeal. The respondents have not filed any appeal against the award.

7. The learned counsel for the claimant has submitted that the notional income fixed by the Tribunal is on the lower side and further the



Tribunal has erred in reducing the percentage of disability fixed by the Chief Medical Officer of the Government Peripheral Hospital, K.K.Nagar, Chennai. Further the compensation awarded under various heads are also on the lower side. Hence prays to enhance the compensation.

8. Countenancing the argument, the learned counsel for the Insurance Company has submitted that the claimant herein has failed to prove the income, hence the Tribunal has fixed the notional income and the same is more than just compensation hence the enhancement of compensation has not arisen in this case. The learned counsel has also submitted that the percentage of disability fixed by the Tribunal is based on the evidences placed on record. Hence prays to confirm the same.

9. I have considered the rival submissions made on both sides and also perused the records available.

10. Recently, the Hon'ble Apex Court in ***Mohd. Sabeer vs. Regional Manager, U.P. State Road Transport Corporation*** [***MANU/SC/1597/2022 : AIR 2023 SC 186***] has considered the quantum of



compensation to be awarded in the case of disability and has reiterated the principles laid down by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay kumar & Another [AIR Online 2010 SC 125 : AIR Online 2010 SC 144 : 2011 1 SCC 343]*** has held that the Court has to assess whether permanent disability caused has any adverse effect on the earning capacity of the appellant and only thereafter, the quantum of compensation due to the functional disability has to be fixed.

11. In this case, to prove the disability the claimant herein has produced Disability Certificate issued by the Government Pheripheral Hospital, K.K.Nagar, Chennai. The Disability Certificate being issued by the Chief Civil (Ortho) Surgeon of the Hospital for the purpose of extending all the eligible benefits for the persons with disabilities under the 'Persons to the Disabilities Act' and he has also noted that there is an amputation below knee. The Disability Certificate also states that the claimant herein has assessed, diagnosed with below knee amputation left leg. The percentage of impairment in relation to part of his body is assessed as 70%. This Disability Certificate was taken note of the Tribunal however, it has been held that since percentage of disability concerned with part of the body it was



converted into 50% for the whole body. Admittedly, this injury sustained i.e., amputation below knee is a schedule injury and falls in two categories of amputation in Serial No.20 and 21 of part 2 of schedule 1 of the Employees Corporation Act. In both the entries the percentage fixed by the Act is 50% disability.

12. By considering the principles laid down by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay kumar & Another***, I have considered the case of the claimant herein. Eventhough, it is claimed by the claimant that he was involved in Gas Cylinder delivery person and was not able to prove his income before the Tribunal. According to him, he has done his regular manual work to do his regular avocation and since his left leg has been amputated, he could not continue his earlier avocation. This disability has drastically reduced his earning capacity and I am of the view that the loss of earning capacity due to loss of amputation left leg, disability is to be fixed to the extent of 60%.

13. The accident had taken place in the year 2015, hence I am of the view that notional income fixed by the Tribunal is within the norms



followed by this Court and hence fixation of notional income of Rs.12,000/- is hereby confirmed. The Tribunal has awarded only 10% as the future prospects of the injured person and the claimant is entitled to get 40% future prospects as held by the Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation [AIR 2020 SC 4284]***. Accordingly, this Court is inclined to grant 40% towards future prospects. Considering the age of the injured 53 years at the time of accident, multiplier '11' is adopted. Accordingly, the loss of earnings is assessed as follows: $[12000 + 4800 (40\% \text{ of } 12000) = 16800 \times 12 \times 11 \times 60\%] = \text{Rs.}13,30,560/-$.

14. The Tribunal has awarded only a sum of Rs.25,000/- as future medical expenses and this Court is of the view that the same is on the lower side and this Court is inclined to enhance the same by Rs.75,000/-. The compensation of Rs.40,000/- awarded under the head pain and sufferings also on the lower side and the same is also enhanced to Rs.75,000/-. The compensation awarded under the head Loss of Amenities is also modified and the same is enhanced to Rs.50,000/-. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.



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15. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Sufferings	Rs.40,000/-	Rs.75,000/-	Enhanced
2.	Transport and Extra Nourishment	Rs.20,000/-	Rs.20,000/-	Confirmed
3.	Loss of Earnings	Rs.6,96,960/-	Rs.13,30,560/-	Enhanced
4.	Attender Charges	Rs.5,500/-	Rs.5,500/-	Confirmed
5	Loss of Amenities	Rs.10,000/-	Rs.50,000/-	Enhanced
6	Medical Expenses	Rs.3,43,908/-	Rs.3,43,908/-	Confirmed
7	Future Medical Expenses	Rs.25,000/-	Rs.75,000/-	Enhanced
	Total Compensation	Rs.11,41,368/- -	Rs.18,99,968/- -	Enhanced to Rs.7,58,600/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,41,368/- is hereby enhanced to Rs.18,99,968/- [Rupees Eighteen Lakhs Ninety Nine Thousand Nine Hundred and Sixty Eight only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent -



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Insurance Company is directed to deposit the amount now awarded 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 to the credit of M.C.O.P.No.8738 of 2015 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

22.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K. RAJASEKAR, J.

SSI

To:

1. The V Judge, Small Causes Court,
Motor Accident Claims Tribunal, Chennai.
2. The Section Officer,
V.R.Section, High Court, Chennai.

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