IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.2474 of 2010

S.Arunagiri ... Appellant/Claimant

Vs.

1. K.Palanichami

2. P.Kulandaivelu

3. Iffco-Tokio General Insurance Co. Ltd., No.28, (Old No.195), I & II Floor, North Usman Road, T.Nagar, Chennai - 600 017.

4. K.C.Somasundaram ... Respondents/Respondents

Prayer : This Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Award dated 31.05.2010 made in M.C.O.P.No.547 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.III), Dharapuram.

For Appellant : Mr.S.Kaithamalai Kumaran
For R3 : Mr.N.Vijayaraghavan
For R1, R2 and R4 : Ex parte

JUDGMENT

The injured claimant is the appellant herein. This appeal is filed for enhancement of compensation of Rs.2,00,000/- awarded against the total claim of Rs.5,00,000/-.

2. The facts that the appellant met with an accident involving the vehicle insured with the third respondent Insurance Company and the accident took place due to rash and negligent driving of the driver of the vehicle and the injured was, at the time of accident, 53 years and he was employed as lorry driver and his earning was Rs.6,000/- p.m. and he sustained fracture on both bones and severe injury in the right thigh and eye resulting in partial loss of vision and the disability sustained in both the legs was assessed at 48% by PW2-Doctor and the disability sustained due to partial loss of vision was assessed at 30% by P.W.3-Doctor and the injured claimant, during the period of his treatment, was without any employment for five months and the disability sustained by him led to functional disability resulting in loss of his earning capacity, which in turn resulted in loss of future income, are borne out by oral and documentary evidence and are not seriously objected on the side of

the Insurance Company in this appeal. The Tribunal having accepted the above stated material factors, determined total compensation of Rs.2,00,000/- with interest at the rate of 7.5% p.a. under different heads as follows:

Loss of income	Rs. 66,000/-
Disability	Rs. 45,000/-
Transport and Extra nourishment	Rs. 4,000/-
Medical Expenses	Rs. 80,000/-
Pain and sufferings	Rs. 5,000/-
Total	Rs.2,00,000/-

3. As rightly argued by the learned counsel appearing for the appellant, the compensation awarded under the headings "Transport and Extra nourishment" and "pain and sufferings" are too low and inadequate. Further, there is no reason assigned in the impugned award for rejecting the medical evidence of 78% permanent disability and for assessing the permanent disability at 48%.

4. The learned Standing Counsel for the Insurance Company would at this juncture draw the attention of this Court that the medical evidence would only disclose the extent of permanent disability of the particular part of the body and the medical evidence is not sufficient enough to disclose the degree of functional disability of the whole body, which is the main criteria for assessing the loss of earning capacity and on the failure of the claimant to adduce on such evidence, the pecuniary and non-pecuniary loss, due to the disability sustained by the injured claimant, shall be calculated by conventional method of awarding Rs.2,000/- per degree.

5. This Court finds considerable force in the argument so advanced on the side of the Insurance Company. At the same time, this Court is inclined to award reasonable amount as compensation for loss of income during the treatment period of the claimant and is further inclined to enhance the compensation for other factors. As the discussion held above, the compensation amount is enhanced as follows:

Loss of income for 5 months, i.e. during the treatment period of the claimant	Rs. 30,000/-
Loss of permanent disability (78% x Rs.2000=Rs.1,56,000/- rounded off to Rs.1,60,000/-)	Rs.1,60,000/-
Transport and Extra nourishment	Rs. 25,000/-
Medical Expenses	Rs. 80,000/-
Pain and sufferings	Rs. 25,000/-
Total	Rs.3,20,000/-

The enhanced amount is payable with interest at 7.5% p.a.

6. In the result, the compensation awarded by the Tribunal is enhanced from Rs.2,00,000/- to Rs.3,20,000/-. The third respondent Insurance Company is directed to deposit the enhanced compensation amount after deducting the amount already deposited, with interest at 7.5% p.a. from the date of claim petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the entire compensation amount on filing cheque petition. The Civil Miscellaneous Appeal is accordingly ordered. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   The Additional District Judge cum Fast Track Court No.III,
   Dharapuram.

+ 1 cc to Mr.N. Vijayaraghavan, Advocate Sr.41816
+ 1 cc to Mr.A.K. Kumarasamy, Advocate SR.41501

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VD(CO)
Eu 14.10.15