IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2388 of 2015

S.Murugan ... Appellant / Claimant

versus

1. A.Ahamed Sahathullah

2. Shriram General Insurance
Company Limited,
2nd Floor, City Center,
66, Thirumalaipillai Road,
Near Vanimahal,
T.Nagar, chennai.
Now at No.4, Lady Desika Road,
Moogambika Complex, II Floor,
Mylapore, Chennai - 600 004. ... Respondents/Respondents
(R1 reamined ex parte before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree dated 18.06.2013 made in M.C.O.P.No.2453 of 2009 on the file of the Motor Accident Claims Tribunal,I Additional Subordinate Judge, Cuddalore.

For Appellant : M/s.Ramya V.Rao
For R2 : M/s.K.Poomalai
R1 Exparte

JUDGMENT

As against the claim made for a sum of Rs.25,00,000/-, the Tribunal has passed an award for a sum of Rs.11,32,005/- payable with interest 7.5% p.a. from the date of petition till the date of deposit.

1.1. The claimant, aged 34 years, a building materials supplier and commission agent, earning a sum of Rs.10,000/- p.m., suffered an accident on 28.10.2009 and according to the claimant, the disability was 60%, for which, he claimed Rs.25,00,000/-.

1.2. The break up details of the award are important to decide justifiability of the compensation.

Transport to Hospital	-	Rs.	10,000/-
Extra nourishment	-	Rs.	10,000/-
Attendant charges	-	Rs.	10,000/-
Damage to article	-	Rs.	2,000/-
Medical expenses (Ex.P4)	-	Rs.	3,04,005/-
Pain and suffering	-	Rs.	60,000/-
Future medical expenses	-	Rs.	1,00,000/-
Loss of enjoyment of amenities	-	Rs.	60,000/-
Loss of earning capacity	-	Rs.	5,76,000/-
Total	-	Rs.	11,32,005/-

1.3. Challenging the award as inadequate, the claimant has filed this appeal.

1.4. While quantifying loss of earning capacity, income has been taken at Rs.7,500/- and deducting 1/3rd towards personal expenses, monthly income was taken at Rs.5,000/- and adopting the multiplier of '16' in respect of 60% disablement, loss of earning capacity has been calculated.

2. The main contention raised is that the future prospects in the future earnings have not been considered while adopting multiplier method of quantification in respect of loss of earning capacity. Loss of expectation of life should have been considered, when the claimant has suffered major head injury, cervical disc prolapse, etc.

2.1. The fixing of monthly income to calculate the loss of earning capacity itself is incorrect. There is no question of deducting 1/3rd towards personal expenses, when the injured claimant is alive. There is a double suffering to the claimant as he will suffer loss of earnings, apart from, the family will also suffer loss of earnings of the claimant.

2.2. The learned counsel for the appellant prayed for increase in the compensation on the head of pain and sufferings, loss of amenities each at Rs.40,000/- and transportation and extra nourishment each at Rs.10,000/-, totalling to Rs.1,00,000/-.

3. The learned counsel for the second respondent would submit that the percentage of disability must be taken at a lesser rate of 50%, considering the nature of injuries.

4. If Rs.7500/- is taken as monthly income and disability is taken at 50%, the compensation for loss of earning capacity

would be at Rs.7,20,000/- (Rs.7,500 x 12 x 16 x 50%). Accordingly, the loss of earning capacity is enhanced from Rs.5,76,000/- to Rs.7,20,000/-. The compensation awarded under other heads are confirmed. The break-up details of the restructured compensation read as under:

Transport to Hospital	-	Rs.	10,000/-
Extra nourishment	-	Rs.	10,000/-
Attendant charges	-	Rs.	10,000/-
Damage to article	-	Rs.	2,000/-
Medical expenses (Ex.P4)	-	Rs.	3,04,005/-
Pain and suffering	-	Rs.	60,000/-
Future medical expenses	-	Rs.	1,00,000/-
Loss of enjoyment of amenities	-	Rs.	60,000/-
Loss of earning capacity	-	Rs.	7,20,000/-
Total	-	Rs.	12,76,005/-
Rounded off	-	Rs.	12,76,000/-

5. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.11,32,005/- to Rs.12,76,000/-, payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

6. The Insurance Company is directed to deposit the enhanced compensation of Rs.12,76,000/-, less the amount already deposited if any, along with interest at the rate of 7.5% from the date of petition till the date of deposit (less the interest for the default period if any), within a period of six weeks, from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. The claimant shall pay the Court Fee for the enhanced compensation.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accident Claims Tribunal,
I Additional Subordinate Judge,
Cuddalore.

C.M.A.No.2388 of 2015

VD(CO)
SP(27/09/2017)