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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1164 of 2010

Chandran

...Appellant/Petitioner

Vs

1.R.Gandhi

2.National Insurance Company,
Rep. By its Branch Manager,
Branch Office,
Anuradha Complex,
3rd Floor, No.333,
Bangalore Road,
Krishnagiri (Dist)

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 17.04.2006 passed in M.C.O.P.No.230 of 2005 on the file of Motor Accident Claims Tribunal/Additional Special Court at Krishnagiri.

For Appellant : Mr.M.K.Ajithkumar
for Mr.A.Prabhakaran

For Respondent-1: Served - No Appearance

For Respondent-2: Mr.M.Krishnamoorthy

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the award dated 17.04.2006 in M.C.O.P.No.230 of 2005, on the file of the Motor Accident Claims Tribunal (Additional Special Court) at Krishnagiri.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The appellant sustained injuries on 31.06.2004 as a result of an accident caused by a pickup Van bearing registration No.TN-29-K-1552 owned by the first respondent and



insured with the second respondent.

(ii) The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.230 of 2005, seeking a compensation of Rs.3,00,000/-. (Rupees three lakhs only).

(iii) The Motor Accident Claims Tribunal, by its Award dated 17.04.2006 in M.C.O.P.No.230 of 2005, directed the second respondent to pay the appellant, a sum of Rs.47,000/- (Rupees forty seven thousand only) together with interest at the rate of 7.5% per annum from the date of claim, till the date of realization.

3. Aggrieved with the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.M.K.Ajithkumar, learned counsel appearing for Mr.A.Prabhakaran, learned counsel for the appellant and Mr.M.Krishnamoorthy, learned Counsel for the second respondent- Insurance Company.

5. According to the learned counsel for the Appellant, the Tribunal has erroneously awarded lesser compensation which is not commensurate with the actual loss suffered by the appellant due to the injuries sustained on account of the accident. According to him, the Tribunal, without any basis, has assessed the disability of the appellant at 10%, even though the disability certificate which was marked as Ex.P.7 before the Tribunal discloses that the Appellant has suffered 25% disability.

6. According to the learned counsel for the appellant, the Appellant had made a claim for Rs.3,00,000/- but, the Tribunal has awarded only a sum of Rs.47,000/-, as compensation. According to him, the Tribunal has not taken note of the fact that the appellant was earning a monthly salary of Rs.5,000/- (Rupees five thousand only) at the time of the accident, but the Tribunal has erroneously assessed the monthly income of the appellant only at Rs.3,000/- (Rupees three thousand only).

7. Per contra, the learned Counsel for the second respondent- Insurance Company would submit that no document was filed by the appellant before the Tribunal to prove that the appellant was earning a monthly income of Rs.5,000/- at the time of the accident. According to him, the Tribunal has considered all the materials available on record and only



thereafter, has passed the award in favour of the appellant and the compensation awarded to the appellant, according to him, is a just compensation.

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8. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective Counsels observes the following:

(a) The appellant has not sustained any fracture on account of the accident caused by the vehicle insured with the second respondent.

(b) Even according to the appellant, as seen from the claim petition, the injuries sustained by him are as follows:

(i) Swelling pain over right fore arm

(ii) Laceration over left thigh 3x1x1 cm, and multiple injuries all over the body

(c) The appellant was a self employed person and as seen from the claim petition, he was running a sound system by name and style "Jayanthi Sound System" at Kaveripattinam and was earning a monthly income of Rs.5,000/-. No document was filed by the appellant before the Tribunal to prove that he was earning a monthly income of Rs.5,000/-. Considering all these factors, the Tribunal has assessed the notional income of the appellant at Rs.3,000/-.

(d) The appellant has produced the disability certificate-Ex.P.7. As per the disability certificate, the appellant has suffered 25% disability. Without any basis, the Tribunal, on its own, has assessed the disability of the appellant at 10%. In the considered view of this Court, the Tribunal ought not to have assessed the disability of the appellant at 10% without any basis, even though the appellant has produced the disability certificate which discloses that the appellant had suffered 25% disability.

(e) The accident had happened in the year 2004. The only infirmity in the award is that the Tribunal ought to have assessed the disability of the appellant at 25% and not at 10%. Accordingly, the compensation payable to the appellant for his disability has to be enhanced to Rs.25,000/- instead at Rs.10,000/-, calculated at the rate of Rs.1,000/- per percentage of the disability, as determined by the Tribunal.



(f) Excepting for the above infirmity in the award, this Court is of the considered view that the award passed by the Tribunal on other heads of compensation is a just compensation.

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9. In the light of the above observations, this Court is of the considered view that the compensation awarded under the impugned award dated 17.04.2006, passed in M.C.O.P.No.230 of 2005 is enhanced to Rs.62,000/- instead of Rs.47,000/-.

10. In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) the compensation awarded by the Tribunal under the impugned award is enhanced to Rs.62,000/- (Rupees sixty two thousand only) from Rs.47,000/- (Rupees forty seven thousand only).

(iii) the second respondent-Insurance Company is directed to deposit the enhanced Award amount of Rs.62,000/- (Rupees sixty two thousand only) together with interest at the rate of 7.5% per annum from the date of claim till the date of realization, after deducting the amount already deposited, to the credit of M.C.O.P.No.230 of 2005 on the file of Motor Accident Claims Tribunal, (Additional Special Court) at Krishnagiri within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the amount lying to the credit of M.C.O.P.No.230 of 2005 along with accrued interest by filing an appropriate application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional Special Court, Krishnagiri.



2.The Section Officer,
Vernacular Section,
Madras High Court.

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+1cc to Mr.A.Prabhakaran, Advocate sr.no.66151
+1cc to Mr.M.Krishnamoorthy, Advocate sr.no.66090

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