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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1972 of 2008

M.Rajkumar

.. Appellant

Vs.

1. Mohamed Shali
2. S.Mohamed Farook
3. United India Insurance Co.,
Dr.Nanjappan Road,
Coimbatore - 18.

(Respondent 1 in set-exparte
before the Tribunal)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.08.2007 made in MACT O.P.No.507 of 2003 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.4, Coimbatore at Tirupur).

For Appellant : Mr.S.V.Vasanthakumar

For R3 : Mr.S.Arun Kumar

R1 : Exparte

J U D G M E N T

Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred this appeal.

2.The case in brief, is as follows:

On the fateful day, ie., on 09.02.2002, at about 5.45am, the appellant was walking in Mettupalayam to Ooty Main Road at Mettupalayam near Vaiyapuri Hotel, to cross the road, a lorry bearing Registration No.TN 37 K 2192 belonging to the second respondent and insured with the third respondent came in a rash and negligent manner and hit the appellant. Due to the said impact, the appellant sustained grievous injuries. Because of the same, the appellant filed a claim petition seeking compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,21,950/- with interest at the rate of 7.5%



per annum from the date of petition. Challenging the same, the present appeal has been filed by the claimant seeking enhancement of the compensation awarded by the Tribunal.

3.The learned counsel for the appellant submitted that at the time of accident, the appellant was aged 23 years and was earning Rs.6,000/- per month as a cleaner in the mini bus. Without considering the same in a proper perspective, the Tribunal has fixed only a lesser sum of Rs.3,000/- per month. The learned counsel further submitted that the compensation awarded by the Tribunal under other heads is also very meagre and the same have to be enhanced, considering the nature of the injuries sustained by the appellant.

4.The learned counsel for the third respondent/Insurance Company submitted that the Tribunal has awarded the compensation which is just and reasonable and hence the same does not require any interference in the hands of this Court.

5.Heard the learned Counsel on either side and perused the materials available on record carefully and meticulously.

6.P.W.1 /appellant/ claimant deposed in his evidence that he was aged 23 years and was earning Rs.6,000/- per month as a bus cleaner. He further deposed that after the accident, he was unable to do his avocation due to the injuries sustained. However, no proof was produced with regard to the income earned by the appellant. As such, the Tribunal has rightly fixed the monthly income of the appellant at Rs.3,000/- and the same does not call for any interference.

7.As per Ex.A3 -discharge summary, the appellant was given treatment at Vethanayagam Hospital, Coimbatore. P.W.2-Dr.Senthilkumar who treated the appellant deposed in his cross examination that the appellant suffered the permanent partial disability due to the restricted movement of left foot and ankle and loss of stability at 40%. Ex.A6 is the disability certificate. Considering those oral and documentary evidence, the Tribunal has correctly fixed the loss of earning power at 25% and adopted the multiplier of 17 as per the Schedule to the Motor Vehicles Act and quantified the compensation under the head "loss of earning power" at Rs.1,52,000/- and the same is fair, just and reasonable, warranting no interference by this Court.

8.Further, the Tribunal has fixed Rs.950/- towards transport charges as per Ex.A5 voucher, Rs.2,000/- towards extra nourishment, Rs.10,000/- towards loss of pain and suffering, Rs.52,000/- towards medical expenses, as per Ex.A4 medical bills and Rs.5,000/- towards loss of income during treatment period.



The amounts awarded by the Tribunal under the above heads are very reasonable and hence, the same are confirmed as such.

9. Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The third respondent/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Fast Track Court No.4,
Coimbatore at Tirupur).

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

+1cc to Mr.S.V.Vasanth Kumar, Advocate, S.R.No. 52586

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 52972

C.M.A.No.1972 of 2008

BP(CO)
GN(12/08/2021)