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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2090 of 2019

Chakkarai @ Chakkarapani

.. Appellant/Petitioner

Vs.

1.Sriram
(set ex-parte before tribunal)

2.The Divisional Manager,
United India Insurance Company Ltd.,
Third Party Service Hub,
Plot No.35, 36, 37, AR Plaza, 45 Feet Road,
Balaji Nagar Extension, Saram,
Puducherry.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.04.2018 made in M.C.O.P.No.2242 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court at Cuddalore.

For Appellant : Ms.V.Gayathri
for Mr.R.Sreedhar

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 07.04.2018 made in M.C.O.P.No.2242 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court at Cuddalore.

2.By consent of both the learned counsel appearing for the appellant and 2nd respondent, the appeal is taken up for final disposal at the stage of admission itself.



3.The appellant is claimant in M.C.O.P.No.2242 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court at Cuddalore. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.03.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 2nd respondent- Insurance Company to pay a sum of Rs.2,93,080/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that the Tribunal awarded a meagre sum of Rs.2,93,080/- against the claim of Rs.15,00,000/- claimed by the appellant. The appellant was working as a tree cutter and was earning a sum of Rs.20,000/- per month. The Tribunal considering the nature of work and age of the appellant, ought to have fixed notional income as Rs.6,500/- per month instead of Rs.5,000/- per month. The medical board assessed percentage of disability suffered by the appellant as 40% and the Tribunal erred in reducing the same to 25% and granted compensation. The amounts awarded by the Tribunal towards pain & suffering and loss of income are meagre. The Tribunal has not granted any amount towards future medical expenses and prayed for enhancement of compensation.

5.Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has failed to prove his age, avocation and income. In the absence of material evidence, the Tribunal fixed the monthly income of the appellant as Rs.5,000/-, which is not meagre. The Medical Board assessed that the appellant has suffered 40% disability. The Tribunal considering the nature of injuries, reduced the percentage of disability to 25% and awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant suffered only fracture in the right leg and multiplier method adopted by the Tribunal is not correct. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

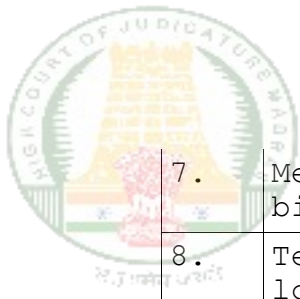
6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that he sustained grievous injury and unable to work as he was doing earlier before the accident. The appellant himself examined as P.W.1 and deposed to that



effect. He was referred to Medical Board, Government Head Quarters Hospital, Cuddalore, which assessed the disability of the appellant as 40% for whole body and issued disability certificate. The appellant has also filed other documents to show the nature of injuries and fracture sustained by him in the accident. Due to the grievous injury, the appellant has suffered segmental fracture of right fibula with fracture of distal 1/4th right tibia with Grade IIIB compound fracture of calcaneum, cuneiform, navicular right foot. He cannot do work as he was doing earlier by using his right foot. In view of the same, the Tribunal has applied multiplier method. The Tribunal has reduced percentage of disability to 25% and the same is not correct. The Medical Board assessed the disability of the appellant as 40% for whole body. The appellant is entitled to compensation for 40% disability. The appellant claimed that he was working as a tree cutter and was earning a sum of Rs.20,000/- per month. In the grounds of appeal, the appellant has contended that the Tribunal ought to have fixed monthly income at Rs.6,500/- per month instead of Rs.5,000/- per month. The accident is of the year 2016. A sum of Rs.6,500/- is fixed as monthly income of the appellant including future prospects. The amount granted by the Tribunal towards disability is modified to Rs.3,43,200/- (6,500 x 12 x 11 x 40/100). The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Partial permanent disability	1,65,000	3,43,200	Enhanced
2.	Transport to Hospital	10,000	10,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Attender's charges	10,000	10,000	Confirmed
5.	Pain and sufferings, mental agony	30,000	30,000	Confirmed
6.	Loss of amenities	10,000	10,000	Confirmed



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7.	Medical bills	38,081.25	38,081.25	Confirmed
8.	Temporary loss of income	20,000	20,000	Confirmed
	Total	Rs.2,93,081.25/- rounded off to Rs.2,93,080/-	Rs.4,71,281.25/- rounded off to Rs.4,71,280/-	Enhanced by Rs.1,78,200/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,93,080/- is hereby enhanced to Rs.4,71,280/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount now determined 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. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mtl

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

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr. J. Chandran, Advocate SR.No.32260

+1cc to Mr. R. Sreedhar, Advocate SR.No.32843

C.M.A.No.2090 of 2019

SAI (CO)
GMY (27/09/2019)