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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.02.2019

Judgment Pronounced on : 04.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.808 of 2011

S.Kothandapani @ Dhandapani ... Appellant/Petitioner

Versus

1.H.Ramesh

2.M/s. New India Assurance Co., Ltd.,
No.43, Moore Street,
Chennai - 600 001. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Judgment and Decree dated 10.06.2010 passed in MCOP.No.1491 of 2006 on the file of the Motor Accident Claims Tribunal (Small Causes Court, No.VI), Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.S.Manohar (for R2)

JUDGMENT

The claimant is the appellant herein, who preferred this appeal for enhancement of compensation.

2.The factum of the accident and the rash and negligent manner of driving on the part of the driver of the offending vehicle, which was insured with the second respondent/Insurance company, are not in dispute and therefore, in this regard, the findings of the Tribunal are hereby confirmed.

3.On the point of quantum, I have heard both sides and perused the materials available record.



4. On a perusal of the Common Judgment, it is seen that the appellant examined himself as PW12 in MCOP.No.1491 of 2006 and deposed that in the road accident that took place on 12.12.2005, he suffered fracture on left femur bone, fracture on humerus right hand and multiple injuries all over the body. As per Ex.P31, he was working as a driver and due to the injuries sustained in the accident, he cannot do the driving work as before.

5. It is seen that Ex.P30/discharge summary was issued by the General Government Hospital indicating that appellant underwent surgery and he took treatment as in-patient for 74 days in two spells, and he was in Government Hospital from 12.12.2005 to 01.02.2006 and thereafter for performing surgery he was hospitalised for another 23 days. He underwent surgery on 21.12.2005. PW.17/Doctor, who had issued Ex.P35/Discharge summary, assessed the disability at 55%. The point for determination is whether the appellant/claimant has sustained injuries of such nature which had rendered in his functional disability. The Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another reported in 2011 (1) SCC 343, held that future loss of earning cannot be assessed on the basis of percentage of the permanent disability, but has to be assessed on the basis of percentage of functional disability i.e., the effect or impact of such permanent disability on his earning capacity. In view of the ratio laid down in the decision cited supra, the functional disability affecting the future earning capacity of the claimant is fixed at 25%.

6. The Tribunal has also fixed the notional income of the claimant at Rs.4,500/- per month and the same is hereby confirmed. However, taking note of the date of the accident, this Court feels to increase a sum of Rs.1,350/- towards his monthly income, which is arrived at Rs.5,850/- per month (Rs.4500 + Rs.1350). Considering the age of the claimant, the multiplier '18' is adopted. Thus, this Court is of the considered view that the loss of income of the claimant can be fixed at Rs.3,15,900/- ($\text{Rs.5850} \times 12 \times 18 \times 25/100$), which will meet ends of the Justice. Having regard to the nature of injuries sustained, this Court feels that the amount of Rs.10,000/- awarded towards attendant charges and pain and suffering at Rs.20,000/- can be increased to Rs.20,000/- and Rs.25,000/- respectively. Accordingly, the amount awarded by the Tribunal under various heads are re-calculated as under:-



Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.27,000/-	Rs.3,15,900/-
Transportation charge	Rs.5,000/-	Rs.5,000/-
Extra-nourishment	Rs.10,000/-	Rs.10,000/-
Attendant charges	Rs.10,000/-	Rs.20,000/-
Damage to clothes	Rs.500/-	Rs.500/-
Medical expenses	Rs.15,000/-	Rs.15,000/-
Pain & Suffering	Rs.20,000/-	Rs.25,000/-
Disability of 50% at the rate of Rs.2000/- per disability.	Rs.1,00,000/-	-
Loss of Amenities	-	Rs.20,000/-
Total	Rs.1,87,500/-	Rs.4,11,400/-

7. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed enhancing the compensation award amount from Rs.1,87,500/- to Rs.4,11,400/- along with interest 7.5% per annum.

(ii) The second respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.4,11,400/-, within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount as determined in this appeal, less the amount already withdrawn, if any.

(iv) The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(v) There shall be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

klt



To

1. The Motor Accident Claims Tribunal
(Small Causes Court, No.VI), Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.T.G.Balachandran Advocate sr55927

+1 cc to M/s.S.Manohar Advocate sr56044

C.M.A.No.808 of 2011

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