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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2019

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.721 of 2015

Senthilvelan

... Appellant

Vs.

1.Ponnarasu

2.Cholamandalam General Insurance Co.Ltd.,
Salem Branch Office,
Salem -636 007.

... Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in the decree and judgment dated 24.06.2014 made in M.C.O.P.No.533 of 2013 on the file of the Court the Accidents Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellant :Mr.N.Chinnaraj

For Respondents :Ms.B.C.Harini for
Mr.N.Vijayaraghavan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in the decree and judgment dated 24.06.2014 made in M.C.O.P.No.533 of 2013 on the file of the Court the Accidents Claims Tribunal/Chief Judicial Magistrate, Perambalur.

Brief facts leading to the claim application are as follows;

2.On 10.06.2001, when the appellant was travelling in a Lorry of the 1st respondent bearing Reg. No.TN 28 AY 9639 as a shift driver when the lorry nearing at Hunebavi cross road pump on Eljippur Hunagntha NH 50 Road near Hums road the



driver of the said lorry had driven the lorry in a rash and negligent manner with over speed was dashed and behind the another lorry. As a result, the appellant who travelled as a shift driver of the same lorry got multiple grievous injuries all over the body, thereby, the right leg of the appellant got crushed and his left leg got fractured. Hence, the appellant claimed a sum of Rs.25,00,000/- Lakhs as compensation for the loss of income, disability, medical expenses incurred due to the accident and inconvenience caused to him.

3.The Insurance Company has filed counter statement, denying the statement of the appellant as false. The Insurance Company has also denied the period of treatment and disability, claimant to have sustained as false. The respondent insurance company has stated that the appellant travelled in the goods carriage only as an unauthorised passenger, which is a clear violation of policy conditions of the respondent. In the FIR itself the same is elicited and there is no proof with regard to the travelling as the owner of goods. The appellant was not a shift driver. The other facts regarding the nature of the injury, the income and occupation of the claimant were also denied by the Insurance Company as excessive and exorbitant. Accordingly, prays for dismissal of the claim petition.

4.Based on the evidences and documents placed before the tribunal, the tribunal has given its findings that the accident occurred only due to the rash and negligent driving on the part of the driver of the vehicle bearing Reg.No.TN 28 AY 9639. While determining the compensation, the Tribunal has observed Ex.P3 and Ex.P4 and also the disability certificate furnished by the witness PW2 and by taking monthly income of the Appellant at Rs.4,000/- and the award has been determined by the Tribunal at Rs.5,02,802/- under the various heads as follows:

1.Loss of future earning capacity	: Rs.3,74,400/-
2.Pain and suffering	: Rs. 20,000/-
3.Extra nourishment	: Rs. 3,000/-
4.Medical Expenses	: Rs. 87,912/-
5.Transport Expenses	: Rs. 14,490/-
6.Attendant	: Rs. 3,000/-

Total	: Rs.5,02,802/-

5.Aggrrieved against the said award, the appellant has preferred this appeal seeking for the enhancement of the Tribunal award. The appellant contended that the monthly income has been taken by the tribunal at Rs.4,000/- is not reasonable against the principle laid down by this Court as well as the Hon'ble Supreme Court in determining the notional income. Other grievances raised by the appellant is that no



future prospects has been awarded by the Tribunal and the Tribunal has not awarded any amount for transportation. The compensation awarded by the Tribunal is very much on the meager side, as the appellant has sustained grievous injury and has also sustained huge disability, the related expenses and the inconvenience caused to him are more. Therefore, the sum awarded by the Tribunal is very much meager and the same has to be appropriately enhanced.

6. Though the Appeal has been posted under the caption for final dismissal, today, when the matter was called, the Appellant was present and was not ready to argue the matter. Heard the learned counsel for the respondent and perused the documents available on record.

7. In view of the documents and evidence placed before the tribunal and also the arguments advanced on the side of the respondent, this Court is of the view that the sum arrived by the tribunal has to be properly considered.

8. It is observed from the records that the Appellant has sustained grievous injury due to the said accident. The injuries sustained by the Appellant has been placed before the Tribunal by filing Ex.P3, the wound certificate. The appellant, after the accident, underwent treatment from 27.08.2012 in Bijapur thereafter, he was treated in the Ganga Hospital from 01.09.2012 to 18.09.2012. Based on the evidence placed by the Appellant, the Tribunal has taken his monthly income as Rs.4,000/- by observing the principle laid down in 2013 to (2) TNMAC Page 645 (DB) (AII) H.D.F.C. Ergo General Insurance Co., Ltd., Vs. Virendra Gond and another. The Tribunal considered the age of the appellant at 48 years and taken the income at Rs.4,000/- and applying the multiplier as 13, it has determined the loss of future income at Rs.3,74,400/-. The grievance contended by the appellant is that the income taken by the Tribunal at Rs.4,000/- is very much on the meager side and the Tribunal has failed to observe that the victim is a shift driver and the same ought to have been properly considered by the Tribunal.

9. It is seen that the age of the injured / appellant was 48 years at the time of accident and the accident took place in the year 2012. The avocation of the appellant was shift driver and he was in regular employment. Hence, the income of the appellant ought to have been modified by taking the income of the Appellant at Rs.6,000/- per month i.e $6,000 \times 12 = \text{Rs.}72,000/-$. Further, against the disability assessed by the Doctor at 70%, the Tribunal has observed the fact that the appellant being the driver has sustained grievous injuries and reasonably taken the disability at 60%. Accordingly, 60% disability is taken and the multiplier 13 if adopted, the loss of income would be $6,000 \times 12 = 72,000/-$ $60/100 \times 13 = \text{Rs.}5,61,600/-$.



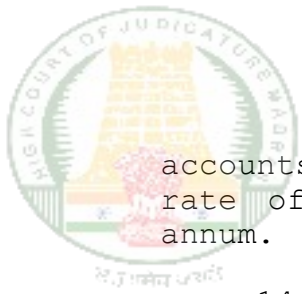
10.The Tribunal has very much observed the fact that the appellant was admitted in Bijapur Hospital and he was also given treatment in Ganga hospital and fairly awarded a sum of Rs.20,000/- under the heads of pain and suffering which is reasonable. The sum awarded under the heads of extra nourishment at Rs.3,000/- is reasonable. The medical expenses assessed by the Tribunal after verifying the documents i.e. Ex.P5, and properly awarded a sum to the extent of Rs.87,912/-. The appellant has also submitted Ex.P6 to the tune of 42,790/- for the transportation expenses, but, regarding the said expenses, the bills were not supported by the evidence and documents. It is seen that the appellant was discharged on 18.09.2012 but the bills submitted by him were not properly supported by any evidence or documents to substantiate his claim. Hence, the Tribunal has rightly awarded a sum of Rs.14,490/- under the heads of transport expenses. The Tribunal has awarded a sum of Rs.3,000/- under the heads of attendant charges. While verifying the nature of the injuries and treatment under went by the injured, the sum awarded by the Tribunal for attendant charges at Rs.3,000/- has to be reasonably modified to Rs.10,000/-. The sum awarded under the other heads are very much reasonable and does not require any modification.

11.Accordingly, the compensation awarded by the tribunal under various heads are modified by this Court as follows;

Heads	Compenstion awarded by the tribunal	Amount modified by this Court
Loss of Income	Rs. 3,74,400/-	Rs.5,61,600/- (6,000 x 12 x 13 x 60 / 100)
Pain & Suffering	Rs. 20,000/-	Rs. 20,000/-
Nourishment	Rs. 3,000/-	Rs. 3,000/-
Medical Expenses	Rs. 87,912/-	Rs. 87,912/-
Transportation	Rs. 14,490/-	Rs. 14,490/-
Attendant	Rs. 3,000/-	Rs. 10,000/-
Total	Rs.5,02,802/-	Rs.6,97,002/-

12.In the result, this Civil Miscellaneous Petition is partly allowed to the limited extent indicated above. No costs.

13.Accordingly,the 2nd respondent /Insurance Company is hereby directed to deposit the modified amount of Rs.6,97,002/- with interest before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is hereby directed to transfer the amount to the claimant's bank



accounts through RTGS within a period of one week thereon. The rate of interest for the modified amount will be 7.5% per annum.

14. The appellant / claimant is hereby directed to pay the additional court fee for the modified compensation if any and Registry is directed to draft the decree only after the receipt of court fee.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Accidents Claims Tribunal/Chief Judicial Magistrate,
Perambalur.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr. MB. ASSOCIATES, Advocate SR.No. 61417
+1cc to Mr. T. Dharini, R.P. Murugan Raja, Advocate SR.No. 61047

C.M.A.No.721 of 2015

A.SK(20/01/2020)