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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.599 of 2016

P.Pitchandi

..Appellant/ Petitioner

Vs.

1.M.Varadaraju

2.IFFCO-TOKIO General Insurance Co. Ltd.,
Sahas Embassy, 145/131, Ground Floor,
Nelson Manickam Road,
Chennai - 600 029.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.08.2015 made in M.C.O.P.No.1433 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai.

For Appellant: Mr.A.Shanmugaraj

For R2 : Mr.J.Michael Visuvasam

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 17.08.2015 made in M.C.O.P.No.1433 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai.

2.By consent of both parties, 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.1433 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.06.2006. The



Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,80,000/- 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 appellant was running a Tea & Tiffin stall and was earning a sum of Rs.9,000/- per month and examined P.W.4 an employee of the appellant, to prove the avocation and his earning. The Tribunal has erroneously fixed meagre sum of Rs.5,000/- as monthly income of the appellant. The appellant has suffered 95% disability, the Tribunal reduced the percentage of disability to 50%. The Tribunal ought to have fixed loss of earning capacity of appellant as 100% as he is not able to do his work as he was doing earlier. The Tribunal failed to consider the evidence of P.W.2-Doctor who has examined the appellant. P.W.2-Doctor deposed that due to the injuries and disability, the appellant could not do his work as he was doing earlier. The Tribunal has granted only a meagre sum of Rs.10,000/- towards loss of income and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not filed any documents to prove his avocation and income. The appellant has suffered only simple injuries and he was in hospital only for two days and subsequently he has taken only CT scan, that too only on the date of the accident. The appellant has not suffered any permanent disability and he has not filed proof of occupation and loss of earning. In the absence of any material, the Tribunal has reduced the percentage of disability to 50% and awarded a sum of Rs.2,000/- per percentage and amounts awarded under different heads are not meagre and prayed for dismissal of the appeal.

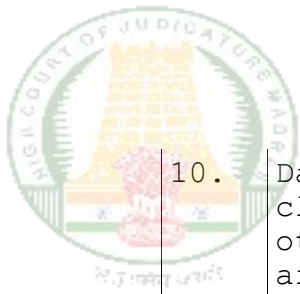
6.Heard the learned counsel appearing for the appellant as well as 2nd respondent-Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the contention of the learned counsel for the appellant that the appellant was running a Tea & Tiffin stall and was earning a sum of Rs.9,000/- per month and examined P.W.4 an employee of the appellant. The Tribunal has rejected the evidence of P.W.4, on the ground the appellant has not produced any documents with regard to registration certificate and license issued by the authority to conduct the tea stall. The accident is of the year



2006. The appellant was aged 47 years at the time of the accident. The Tribunal has fixed Rs.5,000/- as monthly income which is meagre and the same is enhanced to Rs.6,500/-. The Tribunal has granted Rs.10,000/- towards loss of income. Due to injuries the appellant could not have worked atleast for six months. A sum of Rs.39,000/- is granted towards loss of income. The appellant has not proved that he suffered functional disability and the Tribunal has rightly granted compensation for 50% disability on percentage basis. The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and hence, the same is enhanced to Rs.15,000/-. The appellant has produced Ex.P3 - CT scan report and Ex.P4 - Puttur OP chits where he has taken treatment. The amount awarded by the Tribunal towards Transportation charges and attendant charges are meagre and hence, the same are enhanced to Rs.15,000/- each respectively. The amounts granted by the Tribunal under other heads 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.	Permanent disability	1,00,000	1,00,000	Confirmed
2.	Pain and suffering	60,000	60,000	Confirmed
3.	Transportation charges	5,000	15,000	Enhanced
4.	Extra nourishment	5,000	15,000	Enhanced
5.	Cost of attender	4,000	15,000	Enhanced
6.	Loss of income	10,000	39,000	Enhanced
7.	Loss of future prospects	40,000	40,000	Confirmed
8.	Loss of amenities	50,000	50,000	Confirmed
9.	Medical expenses	5,000	5,000	Confirmed



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10.	Damages to clothing & other articles	50,000	50,000	Confirmed
11.	Loss of life	1,000	1,000	Confirmed
	Total	Rs.2,80,000/-	Rs.3,90,000/-	Enhanced by Rs.1,10,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,80,000/- is hereby enhanced to Rs.3,90,000/- 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

mtl

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Special Subordinate Judge No.1,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.A.Shanmugaraj, Advocate, SR.No.23397
+1cc to Mr.J.Michael Visuvasam, Advocate, SR.No.23254

C.M.A.No.599 of 2016

Kak(08/08/2019)