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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2312 of 2019

Sathishkumar

...Appellant/ Petitioner

Vs.

1.Vishwanathan

2.United India Insurance Co., Ltd.,
Divisional Office HUB Ranga Building,
Peramanur Main Road,
Peramanur, Salem - 636 007.

..Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2018 made in M.C.O.P.No.173 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

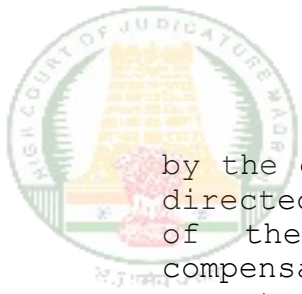
For R2 : Mr.J.Chandran

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 16.11.2018 made in M.C.O.P.No.173 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

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

3.The appellant is claimant in M.C.O.P.No.173 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. 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 01.05.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving



by the driver of the Tata ace belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being the insurer of the said vehicle to pay a sum of Rs.2,35,047/- 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 working as a lorry driver and was earning a sum of Rs.20,000/- per month. Due to the accident, the appellant sustained grievous injuries, fracture shaft of femur right leg, he has taken treatment in Dharan hospital at Salem as in-patient from 02.05.2016 to 08.05.2016, underwent surgery and plates and screws were fixed on his right side femur. After the accident, the appellant could not do the work as he was doing earlier. The amounts awarded by the Tribunal towards pain & suffering, loss of amenities, transportation, loss of earning power and attendant charges are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that in the absence of material evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.7,500/- per month as notional income of the appellant, granted 40% enhancement towards future prospects and awarded just compensation towards loss of earning power. The Tribunal after considering both oral and documentary evidence in proper perspective, awarded compensation under different heads, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

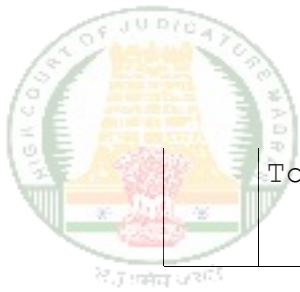
6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that he was working as a lorry driver and was earning a sum of Rs.20,000/- per month. The appellant has failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.7,500/- per month as notional income of the appellant. The accident is of the year 2016 and the notional income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.10,000/- per month as notional income of the appellant. The Tribunal has granted 40% enhancement towards future prospects, applied multiplier '17' and fixed disability of the appellant as 20% as assessed by the Medical Board. The amount awarded by the Tribunal towards future loss of earning power is modified to Rs.5,71,200/- (Rs.10,000/- + 4,000 (Rs.10,000/- x 40%) x 12 x 17 x 20/100). In addition to that, the Tribunal has awarded a sum of Rs.5,000/-, Rs.2,000/-, Rs.2,500/- and Rs.500/- towards pain & suffering, transportation, extra nourishment and damages to



cloth. The appellant has stated that he has taken treatment in Dharan Hospital at Salem as in-patient from 02.05.2016 to 08.05.2016. Considering the nature of injuries and treatment taken by the appellant, this Court enhances compensation to a sum of Rs.25,000/-, Rs.5,000/-, Rs.10,000/- and Rs.2,000/- towards pain & suffering, transportation, extra nourishment and damages to cloth respectively. The Tribunal has not awarded amount towards loss of income and this Court awards a sum of Rs.1,20,000/- (Rs.10,000/- x 12) towards loss of income for 12 months. Though the learned counsel appearing for the appellant contended that the appellant would have incurred future medical expenses, no document was produced by him to substantiate the said contention and therefore, the appellant is not entitled to get any amount towards future medical expenses. The Court has to award just compensation. Though the claimant has claimed lesser amount as compensation, the Court has power to enhance the same. The amounts awarded by the Tribunal under the heads of medical expenses, attendant charges and loss of amenities 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.	Future loss of earning power	1,43,514	5,71,200	Enhanced
2.	Pain & suffering	5,000	25,000	Enhanced
3.	Loss of amenities	10,000	10,000	Confirmed
4.	Medical expenses	66,533	66,533	Confirmed
5.	Transportation	2,000	5,000	Enhanced
6.	Extra nourishment	2,500	10,000	Enhanced
7.	Attendant charges	5,000	5,000	Confirmed
8.	Damages to cloth	500	2,000	Enhanced
9.	Loss of income	-	1,20,000	Granted



Total	Rs.2,35,047/-	Rs.8,14,733/-	Enhanced by - Rs.5,79,686/-
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8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,35,047/- is hereby enhanced to Rs.8,14,733/- 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 by filing necessary applications before the Tribunal. No costs.
kj

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Special Judge,
Sub Court -2,
Motor Accidents Claims Tribunal,
Salem.

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

+1cc to Mr.J.Chandran, Advocate, SR.No.42897/19

C.M.A.No.2312 of 2019

Kak(09/09/2019)