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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.190 of 2018

V.Gajendran

.. Appellant/Petitioner

Vs.

1.C.Malarvizhi

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, 2nd Line Beach
Regina mansion, Chennai-1.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2017 made in M.C.O.P.No.4123 of 2015 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.Ramya V.Rao

For R2 : Mr.R.Neethi Perumal

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 18.04.2017 made in M.C.O.P.No.4123 of 2015 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is claimant in M.C.O.P.No.4123 of 2015 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.60,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.11.2014. 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 car belonging to 1st respondent and directed the 2nd respondent/Insurance Company to



pay a sum of Rs.8,53,000/- 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.

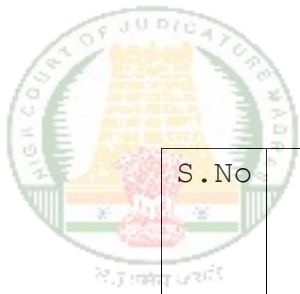
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3.The learned counsel appearing for the appellant/claimant contended that the appellant has sustained fractures on his femur shaft and both bones of right leg. Due to the injuries, he could not do the work as he was doing earlier. The appellant was a sub-contractor in Priyadharshini Constructions and was earning a sum of Rs.40,000/- per month. The Tribunal has fixed meagre sum of Rs.7,500/- per month as notional income of the appellant while awarding compensation towards disability by adopting multiplier method. The Tribunal has failed to award any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the monthly income fixed by the Tribunal is on the higher side and the compensation awarded by the Tribunal is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the appellant has contended that he was a sub-contractor in Priyadharshini Constructions and was earning a sum of Rs.40,000/- per month. In the absence of any material evidence to prove the same, the Tribunal has fixed a sum of Rs.7,500/- per month as notional income of the appellant. The accident is of the year 2014 and the monthly income so fixed by the Tribunal is meagre. This Court fixes a sum of Rs.9,000/- per month as notional income of the appellant. The Tribunal has applied multiplier 11 and fixed the disability of the appellant at 47%. The amount awarded by the Tribunal towards loss of future earning capacity is modified to Rs.5,58,360/- (Rs.9,000/- X 12 X 11 X 47%). The Tribunal considering the evidence of P.W.2/Doctor and nature of injuries sustained by the appellant, has awarded amounts under different heads, which 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.	Transportation, extra nourishment and other expenses	50,000	50,000	Confirmed
2.	Medical expenses	2,07,505	2,07,505	Confirmed
3.	Future Medical expenses	10,000	10,000	Confirmed
4.	Attendant charges	22,700	22,700	Confirmed
5.	Loss of future earning capacity	4,65,300	5,58,360	Enhanced
6.	Loss of earning during the period of treatment	22,500	22,500	Confirmed
7.	Pain and suffering	50,000	50,000	Confirmed
8.	Loss of amenities	25,000	25,000	Confirmed
	Total	8,53,005 rounded off to 8,53,000	9,46,065	Enhanced by Rs.93,060/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,53,000/- is hereby enhanced to Rs.9,46,065/- 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.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1 CC to Mr.R.Neethi Perumal, Advocate sr 70338.
+1 CC to Mr.A.N. Viswanatha Rao, Advocate sr 20593.

C.M.A.No.190 of 2018

PP(CO)
SP(26/08/2019)