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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.634 and 635 of 2018

Prabu

.. Appellant/Claimant in
C.M.A.No.634 of 2018

1.Maheswari
Sathishkumar (died)
2.Malathi
Kamatchi (died)

..Appellants/Claimant
in C.M.A.No.635 of 2018

Vs.

1.Sundararaju

2.The Manager, Oriental Insurance Co. Ltd.,
No.90 A, Thuraiyur Salai,
Namakkal.

.. Respondents in both appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 08.09.2017, made in M.C.O.P.Nos.861 & 703 of 2013, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Namakkal.

(In both appeals)

For Appellant(s) : Ms.T.Gayathri
for M/s.C.Kulanthaivel

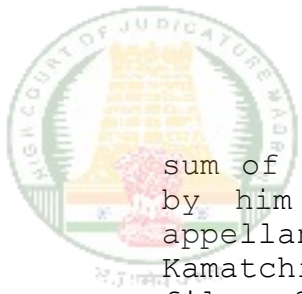
For R2 : Mr.J.Chandran

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants/claimants, challenging the quantum of compensation granted by the Tribunal in the common award dated 08.09.2017, made in M.C.O.P.Nos.861 & 703 of 2013, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Namakkal.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant/claimant in C.M.A.No.634 of 2018 filed M.C.O.P.No.861 of 2013, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Namakkal, claiming a



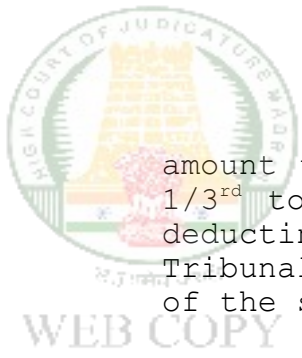
sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.03.2013. The appellants/claimants 1 and 3 in C.M.A.No.635 of 2018 along with Kamatchi and Sathishkumar filed M.C.O.P.No.703 of 2013, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.15,00,000/- as compensation for the death of one Arunachalam who died in the accident that took place on 17.03.2013. Pending claim petition, the said Sathishkumar and Kamatchi died.

4.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 TATA 909 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,88,000/- and Rs.6,85,000/- as compensation to the appellant/claimant in both the appeals respectively at the first instance and recover the same from the 1st respondent.

5.Not being satisfied with the amounts granted by the Tribunal in the common award dated 08.09.2017, made in M.C.O.P.Nos.861 & 703 of 2013, the appellants/claimants have come out with the present appeal.

6(a).The learned counsel appearing for the appellant contended that as far as the appellant in C.M.A.No.634 of 2018 [M.C.O.P.No.861 of 2013] is concerned, he suffered grievous injury of malunited fracture in both bones left leg with impending compartment syndrome. P.W.3-Doctor assessed and certified that the appellant suffered 45% disability. The Tribunal erroneously reduced the same to 20% and granted meagre sum towards disability. The appellant was aged 29 years at the time of accident and was working as a Manager in a private parcel service. Due to the accident, he could not do the work as he was doing earlier. The Tribunal considering the functional disability suffered by the appellant, ought to have granted more amount towards disability. The appellant has taken treatment as in-patient in hospital from 17.03.2013 to 26.03.2013 and 11.04.2013 to 17.04.2013. The Tribunal failed to grant any amount towards loss of amenities, attender charges and damages to cloth. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the same.

6(b).As far as the appellants in C.M.A.No.635 of 2018 [M.C.O.P.No.703 of 2013] is concerned, the learned counsel appearing for the appellants contended that the deceased was working as a loadman and earning a sum of Rs.12,000/- per month. The Tribunal erred in fixing only a meagre sum of Rs.6,000/- as the monthly income of the deceased and failed to grant any



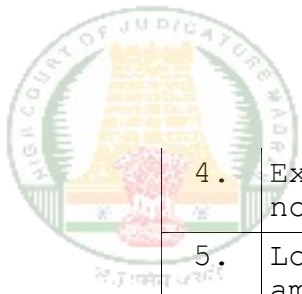
amount towards future prospects. The Tribunal erred in deducting 1/3rd towards the personal expenses of the deceased, instead of deducting 1/4th. In any event, the compensation granted by the Tribunal under other heads are meagre and prayed for enhancement of the same.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering all the materials on record in entirety has granted compensation in both the claim petitions, which are not meagre. The appellant(s) have not made out any case for enhancement of the compensation and hence, prayed for dismissal of both the appeals.

8.Heard the learned counsel appearing for the appellant(s) as well as the 2nd respondent and perused the materials available on record.

9(a).As far as M.C.O.P.No.861 of 2013 [C.M.A.No.634 of 2018] is concerned, the appellant suffered severe injuries all over the body. P.W.2-Doctor has assessed 45% disability suffered by the appellant. The reason given by the Tribunal for reducing the percentage of disability from 45% to 20% is erroneous. Considering the evidence of P.W.2-Doctor and the nature of injuries suffered by the appellant, he is entitled to a sum of Rs.1,20,000/- at the rate of Rs.3,000/- per percentage for 40% disability. The appellant has taken treatment as in-patient in hospital from 17.03.2013 to 26.03.2013 and 11.04.2013 to 17.04.2013. The Tribunal failed to grant any amount towards attender charges, loss of amenities, transportation and damages to clothes. Hence, a sum of Rs.10,000/-, Rs.10,000/-, Rs.5,000/- and Rs.1,000/- are granted towards the said heads respectively. The amounts granted by the Tribunal towards pain and suffering and extra nourishment are meagre. The same are enhanced to Rs.10,000/- each. The amounts granted by the Tribunal under other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

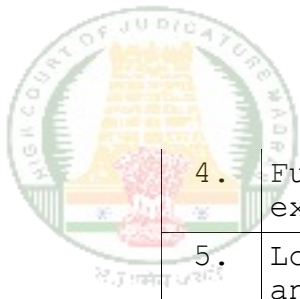
S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	30,000/-	1,20,000/-	enhanced
2.	Medical expenses	1,51,000/-	1,51,000/-	confirmed
3.	Pain and suffering	5,000/-	10,000/-	enhanced



4.	Extra nourishment	2,000/-	10,000/-	enhanced
5.	Loss of amenities	-	10,000/-	granted
6.	Loss of cloth	-	1,000/-	granted
7.	Transportation	-	5,000/-	granted
8.	Attender charges	-	10,000/-	granted
	Total	1,88,000/-	3,17,000/-	Enhanced by Rs.1,29,000/-

9(b).As far as M.C.O.P.No.703 of 2013 [C.M.A.No.625 of 2018] is concerned, the appellants contended that the deceased was aged 42 years and was working as a load man and earning a sum of Rs.12,000/- per month. In the absence of any evidence to prove the same, the Tribunal fixed a sum of Rs.2,000/- per month as income of the appellant. The accident is of the year 2013. The monthly income fixed by the Tribunal is enhanced to Rs.7,000/- and 25% enhancement is granted towards future prospects of the deceased. After deducting $2/3^{\text{rd}}$ towards the personal expenses of the deceased and applying the multiplier of '14', the amounts granted for loss of dependency is modified to Rs.9,80,000/- {[Rs.7,000/- + Rs.1,750/- (25% of Rs.7,000)] x 12 x 14 x $2/3$ }. The Tribunal failed to grant any amount towards loss of consortium to the 1st appellant/wife of the deceased. Hence, a sum of Rs.40,000/- is granted towards loss of consortium. The amounts granted by the Tribunal towards loss of estate and funeral expenses are meagre. The same are enhanced to Rs.15,000/- each. The amounts granted by the Tribunal under other heads are just and reasonable and they 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.	Loss of dependency	6,72,000/-	9,80,000/-	enhanced
2.	Transportation	5,000/-	5,000/-	confirmed
3.	Loss of estate	1,000/-	15,000/-	enhanced



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4.	Funeral expenses	5,000/-	15,000/-	enhanced
5.	Loss of love and affection	2,000/-	2,000/-	confirmed
6.	Loss of consortium	-	40,000/-	granted
	Total	6,85,000/-	10,57,000/-	Enhanced by Rs.3,72,000/-

10. In the result, both the appeals are partly allowed and amount awarded by the Tribunal at Rs.1,88,000/- and Rs.6,85,000/- are enhanced to Rs.3,17,000/- and Rs.10,57,000/- respectively along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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, to the credit of M.C.O.P.Nos.861 & 703 of 2013 respectively at the first instance and recover the same from the 1st respondent. On such deposit, the appellant/claimant in C.M.A.No.634 of 2018 [M.C.O.P.No.861 of 2013] is permitted to withdraw the enhanced award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. On such deposit, the appellants/claimants in C.M.A.No.635 of 2018 [M.C.O.P.No.703 of 2013] are permitted to withdraw their share of the enhanced award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
(Motor Accident Claims Tribunal), Namakkal.

Copy to : The Section Officer,
V.R. Section, High Court, Madras.

AKM/19.09.19/6P-3C /

C.M.A.Nos.634 and 635 of 2018