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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3120 of 2018

Loganathan

..Appellant/Petitioner

Vs.

1.Jayalakshmi,
Proprietor,
Senthilraja Bus Service
No.38, E-Agraharam Street,
Tiruchengode Taluk,
Namakkal District.

2.United India Insurance Co., Ltd.,
No.146, N, Kumar Complex,
Annasalai,
Tiruchengode,
Namakkal District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2018 in M.A.C.T. O.P.No.71 of 2013 on the file of the Motor Accident Claims Tribunal, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant to enhance the award amount granted by the Motor Accident Claims Tribunal, Tiruchengode, in M.A.C.T. O.P.No.71 of 2013 dated 13.07.2018.

2.The appellant is claimant in M.A.C.T. O.P.No.71 of 2013, on the file of the Motor Accident Claims Tribunal, Tiruchengode. He has filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him



in the accident that took place on 08.04.2013.

3.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 bus belonging to the first respondent and directed the second respondent, as insurer of the vehicle and first respondent as owner of the vehicle to pay the compensation of Rs.1,71,441/-, to the appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the injured person is aged about 30 years. He was working as an electrician and earning a sum of Rs.10,000/- per month. Due to the accident he was not able to do his work as he was doing earlier. The Tribunal erred in not granting any amount for loss of earning capacity. Further, the Tribunal erred in reducing the monthly income of the appellant as Rs.6,000/-. P.W.2, Doctor, who was examined before the Tribunal certified that the appellant suffered with 36% disability, but the Tribunal mechanically fixed the disability of the appellant as 20%. Further, the appellant has taken treatment in the hospital as in-patient for nine days from 12.04.2013 to 20.04.2013 and undergone surgery and also plates and screws were implanted. To remove the plates and screws, the appellant has to undergo one more surgery, for which, the Tribunal has not awarded any amount for future medical expenses. The Tribunal has not awarded any amount for attender charges and the amounts granted by the Tribunal under different heads are very meagre and prayed for enhancement of the compensation.

6.Per contra, Mr.C.Paranthaman, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2, Doctor and the disability certificate issued by the Medical Board has rightly reduced the percentage of disability and granted compensation for 20% of disability. The appellant has not let in any evidence to substantiate his claim with regard to avocation and income. In the absence of any materials, the Tribunal fixed the monthly income of the appellant at Rs.6,000/- per month, which is proper. Therefore, the amounts awarded by the Tribunal under different heads are excessive and appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

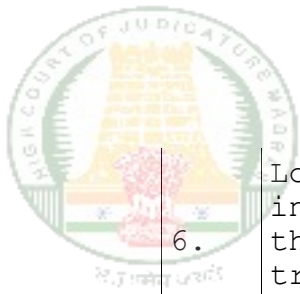
7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on records.



8. According to the appellant, he was working as an electrician and earning a sum of Rs.10,000/- per month. In the absence of any material, Tribunal fixed Rs.6,000/- as notional income. Considering the fact that the accident occurred on 08.04.2013, the amount fixed by the Tribunal is meagre and hence, the monthly income of the appellant is fixed at Rs.9,000/-. The appellant has not produced any evidence to show that he suffered functional disability and he is unable to carry on electrician work. In view of the same, the Tribunal has not awarded any amounts for loss of future earning capacity. On the other hand, the Tribunal has awarded a sum of Rs.18,000/- for loss of income for three months. The appellant is entitled a sum of Rs.81,000/- [Rs.9,000/- x 9] towards loss of income.

9. From the materials available on record, it is seen that the appellant has taken treatment initially in Government Hospital, Thiruchengode and thereafter in Thirukumaran Hospital, Thiruchengode, for a period of one month. The Tribunal has not awarded any amounts for attender charges. Hence, a sum of Rs.10,000/- is granted for attender charges. The amounts awarded by the Tribunal under the heads of pain and suffering and extra nourishment are meagre. Hence, they are enhanced to Rs.30,000/- each. Rs.25,000/- is granted towards loss of amenities and Rs.2,000/- is granted towards loss of clothes. The amounts granted by the Tribunal under all 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.	Medical expenses	58,441/-	58,441/-	confirmed
2.	Pain and suffering	20,000/-	30,000/-	enhanced
3.	Extra nourishment	10,000/-	30,000/-	enhanced
4.	Travelling expenses	5,000/-	5,000/-	confirmed
5.	Partial permanent disability	60,000/-	60,000/-	confirmed



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6.	Loss of income for the treatment period	18,000/-	81,000/-	Enhanced
7.	Attender charges	---	10,000/-	granted
8.	Loss of amenities	---	25,000/-	granted
9.	Loss of clothes	---	2,000/-	granted
10.	Future medical expenses	---	25,000/-	granted
	Total	1,71,441/-	3,26,441/-	enhanced by Rs.1,55,000/-

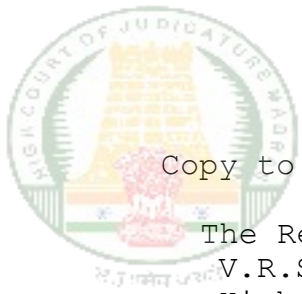
10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,71,441/- is hereby enhanced to Rs.3,26,441/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondents are directed to deposit 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. On such deposit, the appellant 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.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.



Copy to

The Record Keeper,
V.R.Section,
High Court,
Chennai.

+2 ccs to Mr.C.Paraneedharan Advocate sr7865
+2 ccs to Mr.c.Parantharaman Advocate sr7656

C.M.A.No.3120 of 2018

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