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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1109 of 2013

B.Ravi ... Appellant / Claimant
vs.
1.A.S.Mani
2.National Insurance Co. Ltd.,
No.751, Mount Road, III Floor,
Chennai - 600 002. ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 30.07.2007 in M.C.O.P.No.4725 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court-II, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : Mr.S.Arunkumar for R2
Exparte - R1

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.4725 of 2002 on the file of the Additional District Judge, Fast Track Court-II, Chennai. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, and Rule 3 of the MACT Rules seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 13.08.2002.

2. On 13.08.2002, at about 02.00 am, the appellant / claimant was travelling in an ambassador car bearing Registration No.TN 31 A 2323, along National Highways from Thiruvallur to Thiruthani near Thirumurugan Arts and Science College. At that time, a tempo van bearing Registration No.TN 23 A 0216, driven by



its driver in a rash and negligent manner, hit the ambassador car, due to which, the appellant / claimant sustained grievous injuries. The contention of the appellant / claimant is that the accident took place due to the rash and negligent driving of the driver of the said tempo van. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 to PW3 were examined and Exs.P1 to P16 were marked. On the side of the respondents, no documentary or oral evidence was marked.

4.The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The National Insurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.77,000/- together with interest at the rate of 7.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal.

5. The learned counsel appearing for the appellant / claimant submitted that when Dr.Ravi (PW2) has assessed the disability as 50%, the Tribunal ought not to have reduced the disability to 40%. The learned counsel further submitted that the Tribunal should have adopted 17 multiplier as per the Second Schedule, since the age of the appellant / claimant is 32 years. He also submitted that the compensation awarded under other heads are meagre and prayed for enhancement of the same.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant 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 / claimant and second respondent and perused the materials available on record.

8. From the claim petition, it is seen that the appellant / claimant was a salesman in a bakery, aged 32 years, earning a sum of Rs.4,000/- per month. In the absence of any



evidence, the Tribunal fixed the notional income as Rs.3,000/- per month and it is hereby confirmed. From the materials available on record, it is seen that he suffered grievous injuries and had also taken inpatient treatment for about one and half months. Since he had taken inpatient treatment for such long period, he would not have gone to work atleast for three months and hence Rs.6,000/- granted towards loss of pay is very meagre, hence the same is hereby enhanced to Rs.9,000/- (Rs.3,000/- x 3 months). The Tribunal awarded Rs.40,000/- under the head permanent disablement and loss of earning power and the same is hereby confirmed. Considering the nature of injuries, Rs.3,000/- and Rs.3,000/- awarded towards transport to hospital and extra nourishment are hereby enhanced to Rs.5,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards attender's charges and therefore, a sum of Rs.5,000/- is awarded towards the same. All the other heads awarded by the Tribunal are just and therefore no interference is needed. 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)
1	Permanent disablement and loss of earning power	40,000	40,000
2	Transport to Hospital	3,000	5,000
3	Extra nourishment	3,000	5,000
4	Loss of pay	6,000	9,000
5	Pain and sufferings	15,000	15,000
6	Attender's charges	Nil	5,000
7	Loss of amenities	10,000	10,000
	Total	Rs.77,000/-	Rs.89,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.77,000/- is hereby enhanced to Rs.89,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second 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, to the credit of MCOP.No.4725 of 2002 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court - II, Chennai 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 modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.
2. The Section Officer
V.R Section,
High Court of Madras,
Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.7809
+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.8674

C.M.A.No.1109 of 2013

RGN(CO)
SB(20/09/2021)