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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.123 of 2012

S.Shankar

... Appellant/Petitioner

..Vs..

1.V.Ramaswamy

(1st Respondent remained exparte)

2.United India Insurance Co. Ltd.,

Silingi Building

No.134, Greams Road

Thousand Lights, Chennai-600 002.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 23.09.2011 made in MACT O.P No.4819 of 2008 on the file of the V Small Causes Court (Motor Accidents Claims Tribunal, Chennai).

For Appellant : Mr.R.Kalai Arasan

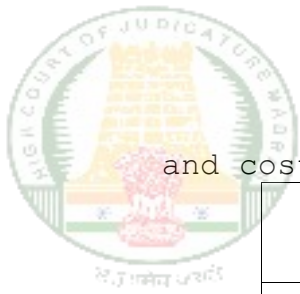
For Respondents : Mr.D.Bhaskaran - R2
R1 - Exparte

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the Appellant/claimant seeking enhancement of compensation under the impugned award dated 23.09.2011 passed by the Motor Accident Claims Tribunal/ V Small Causes Court, Chennai, in M.C.O.P No.4819 of 2008.

2. The Appellant/claimant had sustained injuries on 01.04.2008 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by him as a result of the said accident. The Motor Accident Claims Tribunal under the impugned award has directed the respondents to pay the Appellant a compensation of Rs.8,34,500/- together with interest



and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Permanent disability	1,20,000/-
Pain and suffering	50,000/-
Medical Expenses	4,07,500/-
Extra Nourishment	15,000/-
Transport to Hospital	10,000/-
Damages to clothes	1,000/-
Future Medical expenses	20,000/-
Attender charges	25,000/-
Loss of marital prospects	40,000/-
Loss of amenities	10,000/-
Temporary loss of income	36,000/-
Loss of earning power	1,00,000/-
Total	8,34,500/-

4. The Appellant/claimant has sustained the following injuries: (a) Fracture proximal humerus right hand, (b) Fracture both bones right fore arm (c) Fracture distal radius, (d) Brain injury with subarachnoid hemorrhage, (e) cut injury in fore head, (f) Laceration of liver, (g) Injury in bocal cord, (h) Surgeries conducted and internal fixation made for humerus, both bones and distal end of radius of right hand and (i) Multiple injuries.

5. Before the Tribunal, the Appellant/claimant has filed 16 documents which were marked as Ex.P1 to Ex.P16 and three witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and two specialist Doctors, who examined him as PW2 and PW3. On the side of the respondents, neither any document was filed nor any witness was examined before the Tribunal.

6. The Appellant/claimant was doing real estate business at the time of the accident. In his claim petition, he had claimed that he was earning Rs.15,000/- per month. However, no evidence has been placed by him before the Tribunal to substantiate his monthly income. Since the year of the accident is 2008, this Court assesses the notional monthly income of the Appellant/claimant at Rs.7,500/- instead of



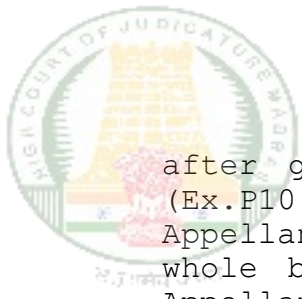
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Rs.6000/- per month assessed by the Tribunal which in the considered view of this Court is low for the nature of the avocation of the Appellant/claimant, that too, when the respondents have not disputed his avocation as seen from the materials and evidence available on record.

7. The nature of the injuries sustained by the Appellant/claimant has not been disputed by the respondents as seen from the evidence available on record. The Appellant/claimant was hospitalized for a period of 22 days at Billroth Hospital, Shenoy Nagar, Chennai between 02.04.2008 and 24.04.2008 and he had to undergo surgeries for the injuries sustained by him. The Orthopedician (PW2), who had examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 50%. The General Surgeon who had also examined the Appellant/claimant with regard to his neuro disability has assessed his neuro disability at 60%. The Tribunal has taking into consideration only the disability certificate Ex.P12 issued by the General Surgeon and has fixed the disability of the Applicant/claimant at 60%. The Tribunal has awarded a disability compensation of Rs.1,20,000/- to the Appellant/claimant based on 60% disability assessed by the General Surgeon calculated at Rs.2000/- per percentage of the disability.

8. Apart from awarding the disability compensation to the Appellant/claimant at Rs.1,20,000/-, the Tribunal has also awarded another sum of Rs.1,00,000/- on lump sum basis towards loss of earning power. After taking into consideration the disability certificate issued by PW3 Doctor which reveals that the Appellant/claimant has sustained 30% mental impairment, 20% for dysarthria (incoherent speech) and 10% towards post head injury and headache, this Court is of the considered view that the Tribunal instead of awarding the compensation separately under the heads (a) "disability" as well as under the head (b) "loss of earning power", ought to have assessed the compensation under a single head namely towards loss of earning power by adopting the multiplier method. Accordingly, this Court awards the compensation to the Appellant/claimant towards loss of earning power in the following manner:

a) The disability certificate (Ex.P10) issued by the Doctor (PW2) assessed the disability with regard to the bone fractures sustained by the Appellant/claimant at 50% and the disability certificate issued by the General Surgeon (PW3) with regard to neuro problems faced by the Appellant/claimant (Ex.P12) reveals that the Appellant/claimant has sustained 60% disability. The Tribunal has not assessed the whole body disability of the Appellant/claimant while granting compensation to the Appellant/claimant towards loss of earning power. This Court



after giving due consideration to the disability certificates (Ex.P10 & Ex.P12) as well as the injuries sustained by the Appellant/claimant and the nature of his avocation, assesses the whole body disability of the Appellant/claimant at 20%. The Appellant/claimant was aged 30 years at the time of the accident which has not been disputed by the respondents before the Tribunal and the correct multiplier to be adopted for the said age is 16. Since the Appellant/claimant was 30 years at the time of the accident, as per the settled practice, he is entitled to 40% towards loss of future prospects in addition to his monthly income. Adopting the multiplier method, the compensation payable to the Appellant/claimant towards loss of earning power is assessed by this Court at Rs.4,03,200/- calculated in the following manner:

$$7,500/- + 40\% \times 12 \times 16 \times 20/100 = \text{Rs.4,03,200/-}$$

9. Since the compensation awarded by the Tribunal under the heads, a) compensation for continuing permanent disability and b) compensation for the loss of earning power is clubbed together by this Court under a single head namely "loss of earning power", the compensation awarded by the Tribunal separately towards "disability" is removed by this Court.

10. With regard to the compensation awarded by the Tribunal under various other heads as indicated supra in this judgment, this Court is of the considered view that the said assessment made by the Tribunal is a just compensation and it does not call for any interference.

11. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.8,34,500/- to Rs.10,17,700/- in the following manner:

Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Permanent Disability	1,20,000/-	...
Pain and suffering	50,000/-	50,000/-
Medical Expenses	4,07,500/-	4,07,500/-
Extra Nourishment	15,000/-	15,000/-
Transport to Hospital	10,000/-	10,000/-
Damages to clothes	1,000/-	1,000/-
Future Medical Expenses	20,000/-	20,000/-
Attender charges	25,000/-	25,000/-
Loss of Marital prospects	40,000/-	40,000/-



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Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Loss of amenities	10,000/-	10,000/-
Loss of earning	36,000/-	36,000/-
Loss of earning power	1,00,000/-	4,03,200/-
Total	8,34,500/-	10,17,700/-

Conclusion:

13. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.10,17,700/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.4819 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1.The V Judge,
Court of Small Causes, Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No. 27726

C.M.A.No.123 of 2012

EV(CO)
GN(23/04/2021)