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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1795 of 2013

T. Selvakumar ... Appellant /Petitioner

Vs.

1.G. Indra

2.United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai 600 001.

... Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.12.2012, made in M.C.O.P. No.1098 of 2010, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. R. Kalai Arasan

For Respondents : Mr. S. Arun Kumar (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 14.12.2012, made in M.C.O.P. No.1098 of 2010, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.1098 of 2010, on the file of the IV Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.35,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2010.



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 Tanker Lorry belonging to the 1st respondent and directed the 2nd respondent who is the insurer of the offending vehicle to pay a sum of Rs.12,56,200/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 14.12.2012, made in M.C.O.P. No.1098 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended in the accident that occurred on 30.01.2010, the appellant sustained crush injury of total right forearm and has taken treatment as in-patient at the Government Stanley Hospital for a period of 17 days and thereafter as out-patient till 08.04.2010. His right hand below elbow was amputated and he suffered 70% total permanent disability as assessed by P.W.2-Doctor. The Tribunal erroneously reduced the same to 65% and granted meagre sum towards disability. The appellant was earning a sum of Rs.15,000/- per month as Senior Audit Assistant at M/s. S.E. Prabakar & Co., Chennai and also Rs.2,25,756/- per annum as Insurance Agent at M/s. ING Vysya, Bangalore. The appellant filed Exs.P5 to P9 and proved his avocation and income. The Tribunal without considering the documents filed by the appellant, erroneously fixed a meagre sum of Rs.8,500/- per month as notional income. The Tribunal ought to have fixed the monthly income based on Ex.P8 - Income Tax Returns. The appellant was aged 33 years at the time of accident and he lost his right hand below elbow. The Tribunal failed to award any amount towards future prospects of the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced any acceptable document and evidence with regard to his employment as Senior Audit Assistant and also that he was working as an Insurance Agent and his income. The appellant filed his Income Tax Returns, but he did not file the statement. The appellant has not filed any subsequent Income Tax Returns to show that even after recovery, his income has been reduced. The Tribunal considering the materials placed before it, has fixed the notional income of the appellant as Rs.8,500/-, which is not meagre. The Tribunal fixed disability as per the Workmen Compensation Act and awarded compensation. The appellant was aged 33 years at the time of accident. The correct multiplier



applicable is '16'. The Tribunal erroneously applied the multiplier '17'. The amounts granted by the Tribunal under different heads are not meagre. The appellant has not made out any case and is not entitled for any enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the appellant has contended that he is working as a Senior Audit Assistant in M/s. S.E. Prabakar & Co., Chennai and was getting a sum of Rs.15,000/- per month and but also earning a sum of Rs.2,25,756/- per annum working as an Insurance Agent at M/s. ING Vysya, Bangalore. Apart from filing salary certificate, the appellant also filed Form 16-A to prove the income he earned before the accident and Income Tax Returns for the years 2010-2011 and 2011-2012. In the Income Tax Returns filed for the year 2010-2011, he has declared his income as Rs.1,62,830/- and in the Income Tax Returns filed for the year 2011-2012, he has declared his income as Rs.34,930/-. The Tribunal did not accept the Income Tax Returns on the ground that the appellant failed to produce the statement of income. The said reasoning is erroneous. The accident has occurred on 30.01.2010. The appellant has produced Ex.P8- Income Tax Returns for the year 2010-2011, showing his income as Rs.1,62,830/- and Ex.P9 - Income Tax Returns for the year 2011-2012, showing his income as Rs.34,930/-. After the accident, his income has been reduced. The appellant is entitled to compensation based on the gross income of Rs.1,62,830/- as declared by him in the Income Tax Returns - 2010-2011 and not on the notional income fixed by the Tribunal. The appellant was aged 33 years at the time of accident. The Tribunal adopted multiplier method for granting compensation for the disability suffered by the appellant. The correct multiplier applicable for the age group 33 as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 (SC) [Smt.Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.] is '16'. The Tribunal erroneously applied the multiplier '17'. Hence, applying the correct multiplier, the compensation awarded by the Tribunal towards disability is enhanced to Rs.16,93,432/- [Rs.1,62,830/- x 16 x 65%]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	11,27,100/-	16,93,432/-	Enhanced
2.	Loss of income	25,500/-	25,500/-	Confirmed
3.	Pain and suffering	25,000/-	25,000/-	Confirmed
4.	Damages to clothes	1,000/-	1,000/-	Confirmed
5.	Extra nourishment	10,000/-	10,000/-	Confirmed
6.	Attendant charges	10,000/-	10,000/-	Confirmed
7.	Medical expenses	7,573.50/-	7,573.50/-	Confirmed
8.	Transportation	10,000/-	10,000/-	Confirmed
9.	Loss of amenities	40,000/-	40,000/-	Confirmed
	Total	12,56,173.50/- rounded off to 12,56,200/-	18,22,505.50/- rounded off to 18,22,600/-	Enhanced by Rs.5,66,400/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.12,56,200/- is enhanced to Rs.18,22,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, 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. No.1098 of 2010. On such deposit, the appellant is permitted to withdraw the enhanced award amount,



now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.5,66,400/-. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa
To

The IV Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

Copy to

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

+1cc to M/s.S.Arunkumar, Advocate Sr.34609

C.M.A.No.1795 of 2013

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srg 24/08/2021