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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:17.12.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1259 of 2015

M.Arumugham

.. Appellant/Claimant

/versus/

1.V.Vijayan

2.N.Sivabakkiam

3.United India Insurance Company Ltd.,
19/2A, Junction Main Road,
Salem 636 004.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award of the Motor Accident Claims Tribunal (II Additional District Court), Tirupur in M.C.O.P.No.303 of 2013 dated 25.08.2014.

For Appellant :Mr.S.Kaithamalai Kumaran

For Respondents :Mrs.I.Malar for R3
Exparte - R1 and R2

J U D G M E N T

(The case has been heard through Video Conferencing)

This appeal is filed for enhancement of compensation.

2.The appellant herein on 30.01.2013 at about 3 a.m., as assistant of the crane driver while moving along NH 47 Main Road, near Thottiapalayam privu, Vijayamangalam, a KPN bus bearing Reg.No.KA-51-A-7283 coming from the same direction with high speed rash and negligently dashed the crane from behind. In the said accident, the driver of the crane and the claimant sustained grievous injury. Due to the injury, the driver of the crane died on the spot. The claimant was taken to the hospital. He was treated for the following injuries:

- (1)G-II compound fracture distal phalanx right Grate Toe.
- (2)G-II compound fracture phalanx right second Toe.



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- (3) Fracture proximal phalanx left Great Toe.
- (4) Fracture proximal phalanx left third Toe.
- (5) Fracture lower 1/3 right fibula.
- (6) Fracture temporal bone.
- (7) SAH, SDH.

3. He was treated as in-patient in the hospital for 13 days i.e. from 31.01.2013 to 12.02.2013. Claiming a sum of Rs.10,00,000/- as compensation, claim petition was filed against the owner of the bus and its insurer.

4. The claim petition was resisted by the Insurance Company stating that the alleged accident happened only due to the rash and negligent driving of the crane driver and not due to the tourist bus driver. Further, the quantum of compensation sought also challenged. In addition, the claim petition was resisted on its maintainability for not impleading the driver, owner and insurer of the crane in which the claimant travelling.

5. The Tribunal, after considering the First Information Report registered against the bus driver and the disability certificate given by the Doctor-PW-2, has awarded a sum of Rs.2,17,475/-.

6. Not being satisfied with the said award amount, the present appeal is filed.

7. The learned counsel appearing for the claimant/appellant submitted that the accident took place on 30.01.2013. While the Doctor has assessed 43% of the permanent disability, the Tribunal has awarded only 86,000/- for the said disability instead of assessing it at Rs.3000/- per percentage of the disability. The claimant was in the hospital for 13 days as inpatient and as follow up treatment for three months. During those period, he was assisted by the attender to do his day to day work. No attender charge was awarded by the tribunal. Further, the learned counsel appearing for the appellant submitted that the compensation for loss of income during the treatment period has to be enhanced.

8. The learned counsel appearing for the 3rd respondent/Insurance Company submitted that the Tribunal, after proper consideration of evidence has awarded appropriate compensation by awarding Rs.2,17,475/- taking note of medical expenses, pain and suffering and loss of income besides the percentage of disability assessed by the Doctor.

9. Considered the submissions made by the learned counsel appearing for the appellant and the 3rd respondent and perused the records.



10. Since the accident occurred on 30.01.2013 and the Doctor has assessed disability at 43%, this Court is of the view that the compensation of Rs.86,000/- under the head of disability awarding Rs.2,000/- per percentage shall be enhanced to Rs.1,29,000/- awarding Rs.3,000/- per percentage of disability.

11. As far as the attender charges is concerned, it has been omitted to be considered by the Tribunal. Therefore, a sum of Rs.6,000/- i.e. (Rs.3000X2 months) is awarded. So far as the other heads are concerned, this Court is of the view that there is no necessity to modify and the same to be confirmed. Therefore, except the above modification, the compensation under the other heads are confirmed. Accordingly, this Court enhance the award of the Tribunal as below:

Sl. No.	Particulars	Award amount of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed/Enhanced/Reduced/Awarded
1.	Disability	86,000-00 (43x2000)	1,29,000-00 (43x3000)	Enhanced
2.	Pain and suffering	30,000-00	30,000-00	Confirmed
3.	Medical expenses	57,475-00	57,475-00	Confirmed
4.	Transportation	5,000-00	5,000-00	Confirmed
5.	Extra Nourishment	15,000-00	15,000-00	Confirmed
6.	Loss of earning power	24,000-00	24,000-00	Confirmed
7.	Attender charges	----	6,000-00	Awarded
Total		2,17,475-00	2,66,475-00	Enhanced

12. The award of the Tribunal is modified from Rs.2,17,475-00 to Rs.2,66,475-00. The claimant/appellant is entitled to Rs.2,66,475-00 as compensation with interest at the rate of 7.5% p.a from the date of petition till the date of realisation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award money, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of the copy of the judgment. The claimant/ appellant is permitted to withdraw the award amount, less the amount already withdrawn, if any, on filing appropriate application before the Tribunal.



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13. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

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To:

The II Additional District Judge,
The Motor Accident Claims Tribunal,
II Additional District Court, Tiruppur.

Copy To

The Section Officer,
VR Section, High Court, Chennai-104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.42043

C.M.A.No.1259 of 2015

VG II(CO)
GMY(09/09/2021)