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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2946 of 2013

R. Balu @ Paul Pandi

..Appellant/Claimant

Vs.

1. Subash Chandra Bose

2. The United India Insurance Co. Ltd.,  
No. 38, Anna Salai,  
Chennai 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.04.2011, made in M.C.O.P. No. 4520 of 2006, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. F. Terry Chellaraja

For Respondents: Ms. I. Malar (for R2)

#### J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 09.04.2011, made in M.C.O.P. No. 4520 of 2006, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 4520 of 2006, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.04.2006.



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 Car belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent as insurer of the vehicle to pay a sum of Rs.26,08,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.04.2011, made in M.C.O.P. No. 4520 of 2006, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was working as an Accountant cum Manager in Raja Singh Departmental Store and was earning a sum of Rs.9,000/- per month. To substantiate the same, he has examined his employer as P.W.3 and marked Exs.P28 to P30. The Tribunal without considering the same, has fixed a meagre amount as monthly income and granted only 25% enhancement towards future prospects. The appellant was aged 23 years at the time of accident. The Tribunal ought to have granted 50% enhancement towards future prospects of the appellant. Due to the accident, the appellant suffered grievous injuries and fractures and has taken treatment both as in-patient and out-patient. The Tribunal has not awarded any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that in the absence of any documents to prove that the appellant require future medical treatment, the Tribunal rightly did not award any amount towards future medical expenses. The total compensation granted by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent and perused the materials available on record.

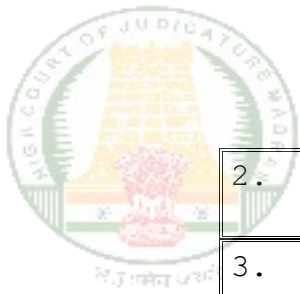
8.It is the contention of the appellant that in the accident, he suffered fracture, dislocations and other grievous injuries all over the body. The appellant has taken treatment as in-patient in Miot Hospital, Chennai from 04.04.2006 to 24.04.2006 and has taken treatment in four different spells at Sri Ramachandra Medical Centre, Chennai from 03.05.2006 to 12.06.2006, from 09.04.2007 to 20.04.2007, from 20.03.2008 to 22.03.2008 and from 30.03.2008 to 09.04.2008. Subsequently, he



has taken treatment at Tirunelveli Medical College Hospital from 15.11.2009 to 27.11.2009 and at B.G. Hospital, Chennai from 07.12.2009 to 16.12.2009. The appellant has also undergone surgeries on 13.05.2006 and 17.04.2007. P.W.2 - Doctor has assessed the percentage of disability suffered by the appellant as 100%. It is the contention of the appellant that he was working in a Departmental Store. He has produced salary certificate as Ex.P31 and examined P.W.3, his employer to prove that he was receiving Rs.9,000/- per month as salary at the time of accident. The appellant or P.W.3 has not stated as to how many persons are employed by P.W.3 and did not file any documents with regard to attendance register and salary register maintained in the Departmental Store. In view of the same, the Tribunal has rejected the evidence of the appellant. There is no error in the said finding of the Tribunal. The Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and granted 25% enhancement towards future prospects. The accident is of the year 2006 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as the notional income of the appellant. The appellant was aged 23 years at the time of accident. Considering the age of the appellant, 40% enhancement is granted towards future prospects. The Tribunal erroneously applied the multiplier '17', whereas the correct multiplier applicable is '18'. Hence, applying the multiplier '18', the amounts granted by the Tribunal towards loss of earning is modified to Rs.18,14,400/-  $\{[Rs.6,000/- + Rs.2,400/- (40\% \text{ of } Rs.6,000/-)] \times 12 \times 18 \times 100\}$ . Due to the injuries sustained in the accident and the long period of treatment taken for the same, the appellant would not have worked atleast for a period of 7 months. Hence, the amount awarded by the Tribunal towards loss of income during treatment period is enhanced to Rs.42,000/-  $[Rs.6,000/- \times 7 \text{ months}]$ . The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.    | Loss of earning | 12,75,000/-                     | 18,14,400/-                       | Enhanced                               |

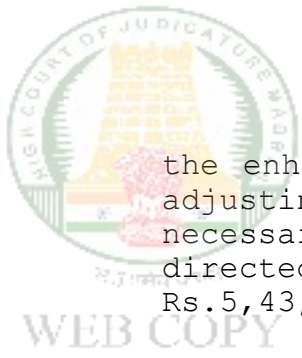


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|     |                                        |             |             |                           |
|-----|----------------------------------------|-------------|-------------|---------------------------|
| 2.  | Pain and suffering                     | 50,000/-    | 50,000/-    | Confirmed                 |
| 3.  | Extra nourishment                      | 10,000/-    | 10,000/-    | Confirmed                 |
| 4.  | Medical expenses                       | 9,70,500/-  | 9,70,500/-  | Confirmed                 |
| 5.  | Transport expenses                     | 10,000/-    | 10,000/-    | Confirmed                 |
| 6.  | Loss of income during treatment period | 37,500/-    | 42,000/-    | Enhanced                  |
| 7.  | Damage to clothes                      | 5,000/-     | 5,000/-     | Confirmed                 |
| 8.  | Attendant charges                      | 50,000/-    | 50,000/-    | Confirmed                 |
| 9.  | Loss of amenities                      | 50,000/-    | 50,000/-    | Confirmed                 |
| 10. | Mental agony                           | 50,000/-    | 50,000/-    | Confirmed                 |
| 11. | Loss of marital status                 | 50,000/-    | 50,000/-    | Confirmed                 |
| 12. | Loss of expectancy of life             | 50,000/-    | 50,000/-    | Confirmed                 |
| 13. | Loss of social status                  | 50,000/-    | 50,000/-    | Confirmed                 |
|     | Total                                  | 26,58,000/- | 32,01,900/- | Enhanced by Rs.5,43,900/- |

The Tribunal having granted compensation under various heads amounting to Rs.26,58,000/-, erred in mentioning the total compensation as Rs.26,08,000/-.

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.26,08,000/- is enhanced to Rs.32,01,900/- along with interest and costs. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 4520 of 2006. On such deposit, the appellant is permitted to withdraw



the enhanced award amount, 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.5,43,900/-. No costs.

Sd/-  
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

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

Copy To:

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

+1cc to M/s.M.Malar, Advocate, S.R.No.23441

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.23330

C.M.A. No. 2946 of 2013

VSN-II (CO)  
RGA (08/10/2021)