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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NAo.3319 of 2013

and

M.P.No.1 of 2013

1.The Director,
(EE/WS/Collectorate/Cudalore),
Director of Rural Development & Panchayat Raj,
Chennai.

2.The Project Officer,
D.R.D.A.(Officer Complex),
Beach Road, Cuddalore.

3.The Collector,
Cuddalore District,
Cuddalore.

... Appellants/Respondents

Vs

R.Vijayakumar

... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award made in M.C.O.P.No.725 of 2010 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore, dated 23.07.2013.

For Appellants : Mr.S.Jaganathan

For Respondent : Mr.R.Sreedhar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 23.07.2013 made in M.C.O.P.No.725 of 2010 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore.

2. The respondent herein is the claimant in M.C.O.P.No.725 of 2010 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore. He filed the above said



claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.02.2010.

3. On 12.02.2010 at about 09.10P.M., when the claimant was proceeding near Vanniyarpalayam Bus Stop, the first appellant's Bolero Car TN-G-0543 came from South to North on the said road at a great speed without blowing horn, driven by its driver in a rash and negligent manner, and hit the claimant's motorcycle. As a result, the claimant sustained fracture and grievous injuries all over his body. The accident was caused due to utter negligence on the part of the driver of the first appellant's vehicle.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Car belonging to the first respondent therein/first appellant herein and directed the appellants to pay a sum of Rs.7,60,700/- as compensation to the claimant.

5. Challenging the awarded passed by the Tribunal, the appellants have come out with the present appeal to set aside the compensation.

6. The learned counsel for the appellants would submit that the Court below has failed to note that the accident had occurred only because of negligent act of the respondent and the tribunal ought not to have fixed the liability as against the appellants herein. Further, the Court below ought to have rejected the petition on the ground that the claimant is not having any valid driving licence. The Court below simply fixed the monthly income without any valid document proof. The Court below without adopting correct yardstick simply fixed the quantum of income at the rate of Rs.6,000/- per month and the same is purely an abuse of process of law and Court. The Court below ought not to have adopted multiplier, when the respondent/claimant has not produced any document for proof of his age. The Court below failed to note that the disability certificate issued by one Dr.Thambiah and he has stated that the injured disability is 65%, but he has not given any treatment to the claimant. The disability certificate dated 04.04.2013 given by the said doctor is only for the purpose of the Court proceedings and the same was blindly accepted by the Court below is purely abuse of process of law. The Court below erred in fixing the rate of interest and the same is liable to be set aside. Further, the Court below erred in fixing the multiplier of 17 which is against the well settled proposition of law and the Hon'ble Apex Court held that the maximum multiplier of 12



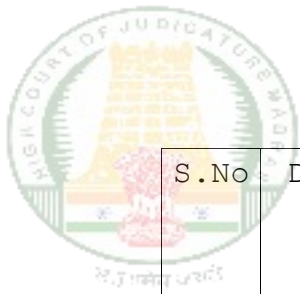
has to be taken into consideration for fixing loss of income to the family. The judgment and decree passed by the Court below is arbitrary, excessive and the same is liable to be reversed. Hence, the learned counsel for the appellants prayed to allow this appeal.

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7. The learned counsel for the respondent would submit that on 12.02.2010 at about 09.10 PM., when the claimant was proceeding near Vanniyarpalayam Bus Stop and at that time, the first appellant's Bolero Car TN-G-0543 came from South to North on the said road at a great speed without blowing horn, driven by its driver in a rash and negligent manner and hit the claimant's motorcycle. As a result, the claimant sustained fracture and grievous injuries all over his body. The accident was caused due to utter negligence on the part of the driver of the first appellant's vehicle. Hence, the learned counsel for the respondent prays to dismiss the appeal.

8. Heard the learned counsel for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

9. It is seen that the injured was working as a driver and was earning Rs.12,000/- per month, but, there is no proof for the same and the Court below has fixed Rs.6,000/- per month, which is correct and this Court is not inclined to interfere with the same. The age of the injured is fixed as 27 years and the proper multiplier based on his age would be 17, which comes to Rs.6,12,000/- ($6000 \times 12 \times 17 \times 50/100$). It would be ascertained that a person who sustained compound fracture of both bones, Right Femur could not work for two months. Hence, the Tribunal has fixed loss of Income for two months, but wrongly calculated for three months ($6000 \times 3 = \text{Rs.}18,000/-$). It is seen that the claimant had sustained compound fracture of bones, Right Femur, this Court is inclined to fix loss of income for a period of three months. After producing the Medical Bills, the Court below has awarded a sum of Rs.95,770/-, which is just and reasonable. The Court below has awarded a sum of Rs.15,000/- for "Pain and Sufferings", Rs.10,000/- for "Transportation" and Rs.10,000/- for "Extra Nourishment". The Court below has clearly considered and awarded a sum of Rs.7,60,770/-, which is just and reasonable. The compensation awarded by the Court below reads 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.	For Permanent Disability	6,12,000/-	6,12,000/-	Confirmed
2.	Pain and Sufferings	15,000/-/-	15,000/-	Confirmed
3	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Medical Expenses	95,770/-	95,770/-	Confirmed
5	Loss of Income	18,000/-	18,000/-	Confirmed
6	Transportation including trip Sheet	10,000/-	10,000/-	Confirmed
	Total	Rs.7,60,770/-	Rs.7,60,770/-	Confirmed

10. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.7,60,770/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants herein is directed to deposit the entire award amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

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1. The Special Subordinate Court,
Motor Accident Claims Tribunal,
Cuddalore.

2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to the Special Government Pleader Sr.14353

C.M.A.No.3319 of 2013
and
M.P.No.1 of 2013

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srg 27/08/2021