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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3525 of 2013

M. Hariharan

... Appellant/Petitioner

Vs.

1.V. Vijayakumar

(R1 remained exparte before the Tribunal)

2.Royal Sundaram Alliance Insurance Co. Ltd.,

No.45& 46, Whites Road,

Chennai 600 014.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.07.2012, made in M.C.O.P. No.2521 of 2011, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. A. Prakash

for M/s. C and K Law Firm

For Respondents: Mr. E. Rajadurai (For R2)

for M/s.N.Vijayaraghavan

R1-Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 23.07.2012, made in M.C.O.P. No.2521 of 2011, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2521 of 2011, on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.06.2011.



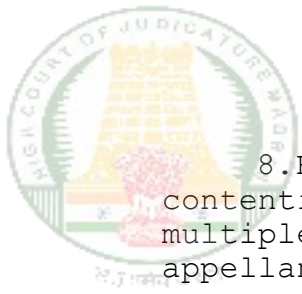
3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Bolero Van and directed the 2nd respondent-Insurance Company, as insurer of the offending vehicle to pay a sum of Rs.3,10,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.07.2012, made in M.C.O.P. No.2521 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident the appellant suffered multiple fractures over right leg and right hand, besides other severe injuries. He has taken treatment as in-patient in Dr.Kamakshi Hospital for months together, underwent surgeries and proved the same by marking Exs.P1 and P2 - accident register and discharge summary, respectively. P.W.2-Doctor examined the appellant and certified that the appellant suffered 70% partial permanent disability and issued disability certificate, marked as Ex.P8. The Tribunal erroneously reduced the percentage of disability to 50% and awarded only meagre amount towards permanent disability by adopting percentage method, instead of adopting multiplier method and granted compensation. At the time of accident, the appellant was working as a P.G. Assistant at M/s. Anna Gem Matriculation School and was earning a sum of Rs.22,000/- per month. Due to the injuries sustained in the accident, the appellant could not do the work as he was doing earlier. The Tribunal failed to award any amount towards future medical treatment, mental agony and loss of amenities. The amounts awarded by the Tribunal towards extra nourishment, pain and suffering, loss of income and transport to hospital are meagre and prayed for enhancement of the compensation.

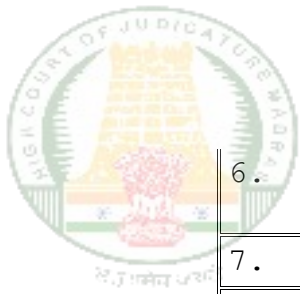
6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method. The Tribunal, considering the entire materials on record has awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of the 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 it is the contention of the appellant that in the accident, he suffered multiple injuries and fracture. P.W.2 Doctor examined the appellant and certified that appellant suffered 70% partial permanent disability. The Tribunal reduced the percentage of disability to 50% on the ground that the assessment of P.W.2 Doctor is on the higher side. The said reasoning of the Tribunal is erroneous. The 2nd respondent has not let in any contra evidence to disprove the evidence of PW2-Doctor and Ex.P8 - disability certificate. Considering the nature of injuries, evidence of P.W.2 Doctor and disability certificate marked as Ex.P8, the disability suffered by the appellant is fixed at 70%. The Tribunal awarded only a sum of Rs.2,000/- per percentage for 50% disability. The accident is of the year 2011. Considering the year of accident, the appellant is entitled to Rs.2,10,000/- towards disability at the rate of Rs.3,000/- per percentage for 70% disability. At the time of accident, the appellant was working as a P.G. Assistant at M/s. Anna Gem Matriculation School and was earning a sum of Rs.22,000/- per month. The appellant himself has admitted that he continued his job after the accident. Therefore, he is not entitled to compensation towards disability, by adopting multiplier method. For the injuries sustained in the accident, the appellant has taken treatment as in-patient in Dr.Kamakshi Memorial Hospital from 07.06.2011 to 13.06.2011, for a period of 7 days. Considering the nature of injuries and period of treatment taken, the sum of Rs.5,000/- each awarded by the Tribunal towards extra nourishment and pain and suffering are meagre and hence, the same are enhanced to Rs.7,500/- and Rs.10,000/- respectively. 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000/-	2,10,000/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	5,000/-	7,500/-	Enhanced
4.	Damages to clothes	1,000/-	1,000/-	Confirmed
5.	Medical expenses	1,45,000/-	1,45,000/-	Confirmed



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6.	Pain and suffering	5,000/-	10,000/-	Enhanced
7.	Loss of income	44,000/-	44,000/-	Confirmed
	Total	3,10,000/-	4,27,500/-	Enhanced by Rs.1,17,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,10,000/- is enhanced to Rs.4,27,500/- 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 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.2521 of 2011. On such deposit, the appellant is permitted to withdraw the 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. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsa
To

1.The Motor Accident Claims Tribunal,
III Judge,
Small Causes Court,
Chennai.

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

C.M.A.No.3525 of 2013

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