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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.415 of 2013

C. Yuvaraj

... Appellant/Petitioner

Vs.

1.R. Venkataramana

(R1 remained set exparte before the Tribunal.)

2.United India Insurance Co. Ltd.,

No.1090, Poonamallee High Road,

Chennai 84.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2012, made in M.C.O.P. No.3359 of 2008, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. Prakash

for M/s. C & K Law Firm

For Respondents : Mr. J. Chandran (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 compensation granted by the award dated 03.04.2012, made in M.C.O.P. No.3359 of 2008, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.3359 of 2008, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 20.05.2008.



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 Lorry belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent as insurer of the offending vehicle to pay a sum of Rs.4,79,900/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 03.04.2012, made in M.C.O.P. No.3359 of 2008, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained fracture over right humerus, multiple fractures over right leg, besides other injuries and has taken treatment as in-patient in Sugam Hospital and Karthick Hospital for months together and underwent surgeries. The appellant filed Exs.P7 to P10 - Medical Report, Discharge Summary, Scan report and X-ray to prove the same. The appellant is taking out-patient treatment even now. P.W.4 Doctor assessed that the appellant suffered 80% disability. The Tribunal without considering the evidence of P.W.4 Doctor and disability certificate marked as Ex.P18, erroneously reduced the percentage of disability to 30% and awarded meagre amount towards disability. The Tribunal failed to award any amount towards future medical expenses, mental agony and loss of earning power. The amounts awarded by the Tribunal towards extra nourishment, pain and suffering and transportation are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.4 Doctor and disability certificate issued by him, converted the percentage of disability assessed by P.W.4 Doctor to whole body and awarded compensation, which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

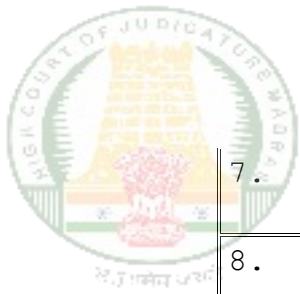
7.Heard learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellant that he was working as a Driver in Janani Travels and was earning a sum of Rs.7,000/- per month. The appellant failed to produce any material to substantiate his



avocation and income. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the appellant. The accident is of the year 2008. The notional income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the appellant. P.W.4 Doctor examined the appellant and certified that the appellant suffered 80% disability. The Tribunal accepted the disability assessed by P.W.4 Doctor and converted the disability for whole body and fixed whole body disability as 30%. Based on the evidence of appellant as P.W.1 and Doctor as P.W.4, the Tribunal applied multiplier method for awarding compensation for 30% permanent disability. The disability fixed by the Tribunal is valid. By fixing monthly income of the appellant at Rs.6,500/-, the amount awarded by the Tribunal towards permanent disability is enhanced to Rs.3,74,400/- [Rs.6,500/- x 12 x 16 x 30%]. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of 6 months. Thus, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.39,000/- [Rs.6,500/- x 6 months], at the rate of Rs.6,500/- per month for 6 months. The Tribunal has awarded meagre amount towards transportation and extra nourishment and hence, the same are enhanced to Rs.5,000/- and Rs.10,000/- respectively. The Tribunal failed to award any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. The amount 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.    | Loss of income     | 27,000/-                        | 39,000/-                          | Enhanced                               |
| 2.    | Transportation     | 3,000/-                         | 5,000/-                           | Enhanced                               |
| 3.    | Extra nourishment  | 5,000/-                         | 10,000/-                          | Enhanced                               |
| 4.    | Damage to clothing | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 5.    | Medical expenses   | 1,14,700/-                      | 1,14,700/-                        | Confirmed                              |
| 6.    | Attendant charges  | 20,000/-                        | 20,000/-                          | confirmed                              |



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|    |                      |            |            |                              |
|----|----------------------|------------|------------|------------------------------|
| 7. | Pain and sufferings  | 50,000/-   | 50,000/-   | Confirmed                    |
| 8. | Permanent disability | 2,59,200/- | 3,74,400/- | Enhanced                     |
| 9. | Loss of amenities    | -          | 10,000/-   | Granted                      |
|    | Total                | 4,79,900/- | 6,24,100/- | Enhanced by<br>Rs.1,44,200/- |

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,79,900/- is enhanced to Rs.6,24,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> 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.3359 of 2008. 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 IV Judge,  
Small Causes Court,  
(Motor Accident Claims Tribunal),Chennai.

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

+1cc to M/s.C & K Law Firm, Advocate Sr.41630

+1cc to Mr.J.Chandran, Advocate Sr.42336

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srg 01/09/2021