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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3236 of 2019

K.Murugan

..
Appellant/Claimant

vs.

1.M.Muthukumar

2.M/s.Sasikala Textiles,
Represented by its Partner Yuvaraj,
Office at No.2/343-A, Vellipparaikadu,
Kalivelampati,
Palladam Taluk,
Tiruppur.

3.HDFC ERGO General Insurance Company Ltd.,
Office at No.4th Floor,
Rajananarayanan Towers,
70, Race Course Road,
Coimbatore.

..
Respondents /Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2018 passed in M.C.O.P. No.1652 of 2009 on the file of the learned Principal Sub Judge, Principal Sub Court-cum-Motor Accidents Claims Tribunal, Tiruppur.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents-1&2 : No Appearance

For Respondent No.3 : Ms.C.Harini for
Mr.M.B.Gopalan

J U D G M E N T

The judgment and decree dated 05.04.2018 passed in M.C.O.P. No.1652 of 2009 by the learned Principal Sub Judge, Principal Sub Court-cum-Motor Accidents Claims Tribunal, Tiruppur is under challenge in the present



Civil Miscellaneous Appeal.

2. The claimant is the appellant in the present Civil Miscellaneous Appeal.

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3. The learned counsel appearing on behalf of the appellant/ claimant contended that the Tribunal has erroneously fixed the monthly income of the appellant/claimant as Rs.6,000/- whereas the claim of the appellant/claimant in this case as Rs.7,000/- per month.

4. The Tribunal has committed an error in granting Rs.12,000/- towards loss of income, which is on the lesser side. This apart, the Medical Board assessed 30% permanent disability, but the Tribunal has not considered all these aspects and awarded Rs.3,000/- per percentage and therefore, the appellant has chosen to file the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

5. The learned counsel appearing on behalf of the third respondent-Insurance Company disputed the contentions of the learned counsel appearing on behalf of the appellant/claimant, by stating that the Tribunal has considered the documents as well as the evidences and accordingly fixed a sum of Rs.6,000/- as monthly income and there is no error apparent on the part of the Tribunal. In the absence of any record to establish the correct income of the appellant/claimant, the Tribunal has arrived a conclusion based on the evidence, which requires no revision and consequently, the Civil Miscellaneous Appeal is liable to be dismissed.

6. The accident occurred on 19.11.2009 at 04.00 P.M., at Mutthur to Kangayam Road, Western side of Matankatuvalasu. The Vellakovil Police Station registered a case in FIR No.697 of 2009 under Sections 279 and 337 of IPC. The appellant/claimant, who was aged about 39 years at the time of accident, was working as Loadman in M/s.Sasikala Textiles, Tiruppur. As per the claim petition, it is stated that the monthly income of the appellant/claimant is Rs.7,000/-.

7. The Tribunal adjudicated the issues with reference to the documents and the evidences produced by the respective parties.

8. Regarding negligence, the Tribunal considered the FIR and arrived a conclusion that the driver of the first respondent-vehicle was driven in a rash and negligent manner, which caused the accident.

9. The Tribunal has narrated the



accident by stating that on 19.11.2009 at about 04.00 P.M., the appellant/claimant was travelling as Loadman in TATA ACE bearing Registration No.TN-42-7578 driven by the first respondent, on Mutthur to Kangayam Road towards West to East direction and when the said Auto was passing Western side of Matankadduvalasu, on Mutthur to Kangayam Road, the first respondent turned the Auto in left side suddenly in a rash and negligent manner, without following the traffic rules and regulations and the Auto lost its balance and control and dashed against road side tree. Due to the accident, the appellant/claimant sustained grievous injuries and he was admitted at Rex Hospital, Coimbatore.

10. As far as the quantum of compensation is concerned, the Tribunal fixed a sum of Rs.6,000/- per month as income of the appellant/ claimant. This Court is of the considered opinion that the monthly income fixed by the Tribunal deserves to be enhanced as a sum of Rs.6,000/-, which is inadequate and is on the lesser side.

11. The appellant/claimant is Loadman and nature of injuries sustained by him are serious. The Doctor assessed the disability as 30%. Ex.P-2 Discharge Summary and Ex.P-3 Medical Bills submitted by the appellant/claimant establishes that he sustained injuries and being the Loadman, the injuries would affect his livelihood.

12. This being the factum, this Court is of the opinion that the monthly income fixed by the Tribunal is to be enhanced. Thus, the total compensation of Rs.2,10,000/-, awarded by the Tribunal, stands modified as detailed hereunder:-

Rs.

Medical Bills	1,62,000/-
Permanent Disability (Rs,3000/-x30)	90,000/-
Loss of Earning Capacity	40,000/-
Pain and Sufferings	30,000/-
Extra Nourishment	15,000/-
Loss of Income (4 months)	24,000/-
Transportation Charges	3,000/-
Attender Charges	10,000/-



Loss of Immunity

10,000/-

Total

Rs.3,84,000/-

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Thus, the appellant/claimant is entitled for the enhanced compensation of Rs.3,84,000/- along with interest at the rate of 7.5% per annum.

13. The third respondent-Insurance Company is directed to deposit the entire award amount along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant/claimant is permitted to withdraw the award amount by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the additional court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this judgment and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 05.04.2018 passed in M.C.O.P. No.1652 of 2009 by the learned Principal Sub Judge, Principal Sub Court-cum-Motor Accidents Claims Tribunal, Tiruppur stands modified and consequently, CMA No.3236 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

Svn

To

The Principal Sub Judge,
Principal Sub Court-cum-Motor Accidents Claims Tribunal,
Tiruppur.

CMA No.3236 of 2019

CP(CO)
CB(19/08/2021)