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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.278 of 2013

P.Soundarrajan

.. Appellant/Petitioner

Vs.

1.M/s. City Transport Service,
31, S.G.Narayan Layout,
Lalbug X Road,
Bangalore ?- 560 027.

2.The New India Assurance Company Limited,
46, Moore Street,
Chennai ?- 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.09.2005 made in M.C.O.P.No.5535 of 1999 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Ms.R.Kishore
for Mr.A.N.Viswanatha Rao

For R2 : Mr.M.Krishnamurthy

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.09.2005 made in M.C.O.P.No.5535 of 1999 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.5535 of 1999 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.06.1999.



4.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 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,27,000/- as compensation to the appellant.

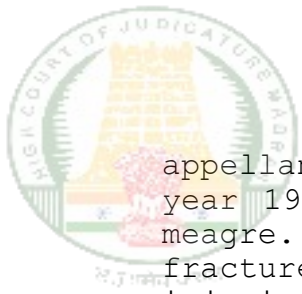
5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that at the time of accident the appellant was working as a Loadman and was earning a sum of Rs.200/- per day. In the accident he suffered fracture in pelvic bone, fracture of hip bone and serious injuries in his stomach. Being a Loadman, due to the injuries sustained by him in the accident, he could not continue his avocation. To prove the nature of injuries and disability, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 65% disability and deposed that appellant cannot lift heavy objects and work. The Tribunal ought to have fixed the monthly income of the appellant as claimed by him. The Tribunal ought to have granted compensation for 100% disability as per II Schedule. The appellant has taken treatment as inpatient for 45 days. The amounts awarded by the Tribunal towards extra nourishment, transportation, pain and sufferings are meagre. The Tribunal has not awarded any amount towards loss of amenities and attendant charges and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the nature of injuries, disability, evidence of P.W.2/Doctor, awarded compensation separately for loss of income, disability and loss of earning power in addition the amounts granted under other heads. The accident occurred in the year 1999 and the notional income fixed by the Tribunal is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of appeal.

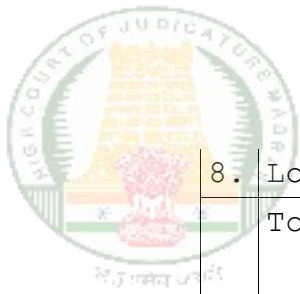
8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the contention of the appellant that he was working as Loadman and was earning a sum of Rs.200/- per day. The appellant produced Ex.P5/salary certificate to prove the said contention. The Tribunal did not accept the same as the Author of the said document was not examined and fixed notional income of the



appellant at Rs.3,000/- per month. The accident occurred in the year 1999 and the notional income fixed by the Tribunal is not meagre. It is the contention of the appellant that he suffered fracture in pelvic bone, fracture of hip bone and serious injuries in the stomach and he could not continue his work as Loadman. P.W.2/Doctor examined the appellant and certified that appellant suffered 65% disability, issued Ex.P6/disability certificate and deposed to that effect. P.W.2/Doctor also deposed that appellant cannot lift heavy objects and cannot stand for a long time and cannot walk for a distance and cannot stand for a long time. Considering the fact that appellant was a Loadman at the time of accident, suffered 65% disability and evidence of P.W.2/Doctor, the appellant is entitled to compensation by adopting multiplier method for loss of earning capacity. The appellant was aged 32 years at the time of accident and the correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], is '16'. P.W.2/Doctor assessed disability at 65% for a particular part of the body and the same is converted to whole body and the disability of the appellant is fixed at 22% for whole body. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.1,26,720/- (Rs.3,000/- X 12 X 16 X 22/100). The appellant has taken treatment in the hospital as inpatient for 45 days but the Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the nature of injuries and disability, a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards transportation, extra nourishment, loss of income, pain and sufferings and disability 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	60,000/-	60,000/-	Confirmed
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Loss of income	18,000/-	18,000/-	Confirmed
4.	Extra nourishment	2,000/-	2,000/-	Confirmed
5.	Transportation	2,000/-	2,000/-	Confirmed
6.	Loss of earning power	30,000/-	1,26,720/-	Enhanced
7.	Attendant charges	-	10,000/-	Granted



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8.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,27,000/-	Rs.2,43,720/-	Enhanced by
		-	-	Rs.1,16,720/-
				-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,27,000/- is hereby enhanced to Rs.2,43,720/- 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, less the amount already deposited, if any, 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.5535 of 1999 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

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

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

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.41945

C.M.A.No.278 of 2013

VBA(CO)
CB(15/07/2021)