IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3707 of 2019

Ganesan .. Appellant/Petitioner

vs.

1.Rangarajan

2.Divisional Manager,
National Insurance Company
Limited,
K.R.T.First Floor, No.33, Barathidasan
Salai,
Promanad Salai, Cantonment,
Trichy District - 620 001. .. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2018 passed in M.C.O.P.No.1460 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondents : R1 - No appearance
R2 - M/s.N.B.Surekha

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 01.11.2018 made in M.C.O.P.No.1460 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Namakkal.

2. The claimant is the appellant, filed the appeal, seeking enhancement of compensation mainly on the ground that the quantum of compensation awarded by the Tribunal is not only inadequate, but not in consonance with the principles laid down by this Court.

3. The learned counsel appearing on behalf of the appellant contended that the monthly income fixed by the Tribunal is on the lesser side. The appellant/claimant was working as Centring Contractor and a monthly income of Rs.4,000/- is fixed, which is

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meagre and therefore, the monthly income as well as the period of loss of income is also to be enhanced. It is further contended that the appellant/claimant spent a sum of Rs.3,28,200/- towards Medical Expenses. He sustained grievous injuries and had taken treatment for more than six months. However, the disability compensation granted is also improper. Thus, the enhancement is to be made under all the heads and therefore, the present appeal is filed.

4. The learned counsel appearing on behalf of the 2nd respondent/Insurance company disputed the contentions by stating that absolutely that there is no proof for income submitted by the appellant/claimant. In the absence of any proof regarding the income, the Tribunal would be right in fixing the monthly income and granted compensation. This apart, the Doctor itself assessed 35% Partial Permanent Disability and the Doctor, who issued the Disability Certificate is a Private Doctor. Therefore, the Tribunal granted a reasonable compensation and the appeal is liable to be rejected.

5. The accident occurred on 28.06.2016 at about 06.30 a.m. Near Namakkal Bus stand. Namakkal Bus stand Police Station registered a case in Crime No.518/2016 under Sections 279 and 337 of IPC. At the time of accident, the appellant/claimant was aged about 40 years and he was working as Centring Employee. Due to the accident, he sustained grievous injuries including fracture. The Claim Petition was filed and the Tribunal adjudicated the issues and arrived a conclusion that the accident occurred due to the rash and negligent driving of the Driver of the Bus bearing Registration No.TN 45 BD 7237. Thus, the Driver of the Private Bus is liable for the cause of the accident. Consequently, the 2nd respondent/Insurance company is liable to pay compensation to the appellant/claimant.

6. As far as the quantum of compensation is concerned, the appellant/claimant had undergone surgery and he had taken treatment for about 53 days as inpatient. The Medical expenses met out by the appellant was about Rs.3,28,200/-. The Doctor assessed the disability as 35%. The disability assessed by the Doctor was taken by the Tribunal as it is and a sum of Rs.3,000/- is fixed for one percentage of disability. It is contended that the accident occurred during the year 2016 and therefore, a sum of Rs.3,000/- for one percentage is on the lesser side.

7. Considering the fact that the appellant/claimant had taken treatment as inpatient for about 53 days and thereafter, had taken treatment as outpatient for few days, this Court is of an opinion that the compensation granted is inadequate. This apart, a sum of Rs.4,000/- fixed by the Tribunal as monthly

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salary is also not in commensuration with the cost index of the year 2016. Even a sum of Rs.4,000/- is lesser than that of the minimum wages to be fixed under the Statutes. Further, the Medical Expenses met out by the appellant/claimant was a sum of Rs.3,28,200/-. He has produced the original Medical bills, which was not disputed by the respondent/Insurance company. Under these circumstances, this Court is of the opinion that the compensation granted by the Tribunal is on the lesser side and accordingly, the award stands modified as detailed hereunder:

1.	Loss of Income (6x10,000/-=60,000)	:	60,000/-
2.	Transport Expenses	:	10,000/-
3.	Extra Nourishment	:	20,000/-
4.	Medical Bills	:	3,28,200/-
5.	For Disability (35%x5,000/-=1,75,000/-)	:	1,75,000/-
6.	Pain and Suffering	:	50,000/-
7.	Attender Charges	:	20,000/-
	TOTAL	:	6,63,200/-

8. Thus, the appellant/claimant is entitled for a total compensation of a sum of Rs.6,63,200/- (Rupees Six Lakh Sixty Three Thousand and Two Hundred only) along with the interest at the rate of 7.5% per annum. The appellant/claimant is not entitled for any interest for the delay period and the delay period is to be calculated by the Tribunal and the interest for the said period is to be deducted, while disbursing the award amount.

9. Accordingly, the 2nd respondent/Insurance company is directed to deposit the entire award amount with accrued interest, deducting the interest for the delay period, within a period of twelve(12) weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the award amount along with the interest by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the additional Court fee, if any, with reference to the enhanced compensation within a period of two(2) weeks from the date of receipt of a copy of this judgment and the payments are to be made through RTGS.

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10. Accordingly, the judgment and the decree dated 01.11.2018 passed in M.C.O.P.No.1460 of 2016 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.3707 of 2019 is allowed in part. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Namakkal.

Copy To

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

+1cc to Mr.N.B.Sureskha, Advocate, S.R.No. 31603
+1cc to Mr.C.Thangaraju, Advocate, S.R.No. 31472

CMA No.3707 of 2019

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