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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.2394 of 2014

K.Ramesh @ Rajendran

..Appellant/Petitioner

Vs.

1.L.Senthil

2.The New India Assurance Co. Ltd.
Represented by its Divisional Officer
Motor 3rd party claims cell
No.69/70, Sheikpet nadu street
Kancheepuram 631 501.

..Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.10.2012 made in M.C.O.P.No.279 of 2009 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Chengalpattu.

For Appellant : Dr.S.S.Swaminathan

For R2 : Ms.G.Sukumari

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.10.2012 made in M.C.O.P.No.279 of 2009 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Chengalpattu.

2.The appellant is claimant in M.C.O.P.No.279 of 2009 on the file of Motor Accident Claims Tribunal, Principal Sub-Court, Chengalpattu. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.09.2009.

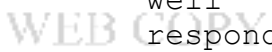


3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata sumo belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tata sumo to pay a sum of Rs.3,06,500/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered fractures of right femur, proximal tibia right, bimalleolar right ankle and due to fractures, he lost his earning capacity. The appellant examined the Doctor as P.W.2 to prove the nature of injuries. P.W.2/Doctor examined the appellant and certified that the appellant suffered 100% disability. The Tribunal without giving any reason reduced the percentage of disability to 73% and granted compensation only by adopting percentage method. The appellant was the driver-cum-owner of the lorry bearing Registration No.TN-21L-9646 viz., Bala Vinayagar and to prove the same, the appellant marked the driving license as Ex.P6. Due to the injuries, fractures and disability suffered, the appellant cannot continue his avocation as driver. The Tribunal ought to have adopted multiplier method and granted compensation separately for disability and loss of earning power. At the time of accident, the appellant was earning a sum of Rs.10,000/- per month. He has taken treatment as in-patient in Government General Hospital, Chennai, from 02.09.2009 to 09.10.2009, 23.03.2010 to 08.05.2010, 20.08.2010 to 04.09.2010, 07.11.2011 to 21.11.2011, on four spells, for more than 120 days. The amounts granted by the Tribunal towards loss of income, loss of amenities and attendant charges are meagre. The Tribunal ought to have granted compensation towards future medical expenses for removal of plates and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant failed to prove that he was owner-cum-driver of the lorry. The appellant has also failed to prove that he suffered functional disability and lost earning power. P.W.2/Doctor assessed the disability of the appellant for two parts of the body. The Tribunal considering the evidence of P.W.2/Doctor and disability certificate, applied formula and fixed disability of the appellant at 73% and granted compensation by adopting percentage method, which is correct. The amounts granted under different heads are not meagre. The appellant has not made out any case



7. 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.

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towards future medical expenses. The amounts awarded by the Tribunal under all other heads are not meagre and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	1,46,000	4,64,100	Enhanced
2.	Transportation	10,000	20,000	Enhanced
3.	Medical expenses	7,500	25,000	Enhanced
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Damage to watch and cell phone	4,000	4,000	Confirmed
6.	Pain and suffering	50,000	50,000	Confirmed
7.	Loss of amenities and enjoyment in life	75,000	75,000	Confirmed
8.	Attendant charges	13,000	25,000	Enhanced
9.	Extra nourishment	-	20,000	Granted
	Total	3,06,500	6,84,100	Enhanced by Rs.3,77,600 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,06,500/- is hereby enhanced to Rs.6,84,100/- 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. 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. No costs.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
Principal Subordinate Judge
Chengalpet.

Copy to
The Section Officer
V.R.Section
High Court, Chennai.

+1 CC to Mr.S.S. Swaminathan, Advocate Sr. 42325
+1 CC to Mr.R. Sivakumar, Advocate sr 42165.

C.M.A.No.2394 of 2014

VGII (CO)
SP(13/09/2021)