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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.743 of 2013

K. Kumar

.. Appellant/Petitioner

Vs.

1.T.V. Baskaran

(R1 remained set exparte before the Tribunal.)

2.The United India Insurance Co. Ltd.,

Motor III Party Claims Office,

No.38, Anna Salai, Chennai 2.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.01.2008, made in M.C.O.P. No.638 of 2005, on the file of the Additional District Judge, Fast Track Court No.III, (Motor Accident Claims Tribunal) Poonamallee.

For Appellant : Ms. S. Ramya

for M/s. J. Mahalingam

For Respondents: Mr. M.J.Vijayaraghavan (For R2)

R1-Exparte

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 08.01.2008, made in M.C.O.P. No.638 of 2005, on the file of the Additional District Judge, Fast Track Court No.III, (Motor Accident Claims Tribunal) Poonamallee.

2.The appellant-claimant filed M.C.O.P. No.638 of 2005, on the file of the Additional District Judge, Fast Track Court No.III, (Motor Accident Claims Tribunal) Poonamallee, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.06.2005.



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 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.64,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.01.2008, made in M.C.O.P. No.638 of 2005, 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 various fractures and multiple injuries all over the body and has taken treatment as in-patient in Government General Hospital from 30.06.2005 to 22.07.2005 and continued treatment as out-patient for a prolonged period. The appellant, as P.W.1, deposed about the nature of injuries sustained in the accident. He also examined P.W.2 Doctor who assessed the appellant and certified that the appellant suffered 35% disability. The Tribunal considering the disability suffered, ought to have awarded more compensation towards disability and pain and suffering. The learned counsel appearing for the appellant further contended that at the time of accident, the appellant was working as a Labour in Airport Cargo, Airport Authority of India and was earning a sum of Rs.200/- per day. The Tribunal fixed only a meagre sum of Rs.5,000/- per month as notional income of the appellant. The amounts awarded by the Tribunal towards loss of income, pain and suffering, permanent disability, medical expenses, transportation and extra nourishment are meagre. The Tribunal failed to award any amount towards attendant charges, loss of earning power, loss of mental agony, loss of amenities and damages to clothes and prayed for enhancement of the compensation.

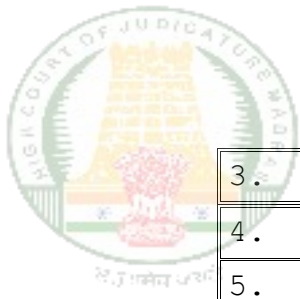
6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not filed any documents to prove the avocation and income. In the absence of any evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded compensation. 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 2nd 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 at the time of accident, he was working as a Labour in Airport Cargo, Airport Authority of India and was earning a sum of Rs.200/- per day. He has marked his Identity Card as Ex.P3, to prove his avocation, but he failed to produce any material to substantiate his income. In the absence of any material evidence, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and awarded a sum of Rs.15,000/- towards loss of income for three months. The accident occurred on 30.06.2005. Considering the year of accident, this Court is of the view that the notional income fixed by the Tribunal and the amount awarded towards loss of income are not meagre. The appellant contended that in the accident, he suffered multiple fractures and injuries all over the body. P.W.2 Doctor examined the appellant and certified that the appellant suffered 35% disability. The appellant failed to prove that he suffered functional disability and lost earning capacity. Hence, he is not entitled to compensation by adopting multiplier method. For the injuries sustained in the accident, the appellant has taken treatment as in-patient in Government General Hospital, Chennai from 30.06.2005 to 22.07.2005, for a period of 28 days. The Tribunal failed to award any amount towards attendant charges and loss of amenities. Considering the period of treatment taken, nature of injuries and disability, a sum of Rs.10,000/- each is awarded towards attendant charges and loss of amenities. The Tribunal has awarded a consolidated sum of Rs.2,000/- towards extra nourishment and transportation, which is meagre. Hence, the same is enhanced to Rs.10,000/-. Considering the in-patient and out-patient treatment taken by the appellant for the injuries sustained by him in the accident, the meagre amount of Rs.2,000/- granted by the Tribunal towards medical expenses is enhanced to Rs.10,000/-. The Tribunal failed to award any amount towards damages to clothes. The appellant is entitled to a sum of Rs.1,000/- towards damages to clothes. 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	15,000/-	15,000/-	Confirmed
2.	Transportation and extra nourishment	2,000/-	10,000/-	Enhanced



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3.	Medical expenses	2,000/-	10,000/-	Enhanced
4.	Disability	40,000/-	40,000/-	Confirmed
5.	Pain and sufferings	5,000/-	5,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Damages to clothes	-	1,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
	Total	64,000/-	1,01,000/-	Enhanced by Rs.37,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.64,000/- is enhanced to Rs.1,01,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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.638 of 2005. 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-II)

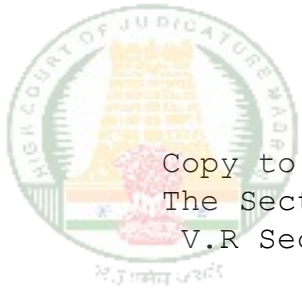
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Sub Assistant Registrar

gsa

To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court No.III,
Poonamallee.



Copy to:
The Section Officer,
V.R Section, High Court, Madras.

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+1cc to Mr.J.Mahalingam, Advocate, S.R.No.42891

C.M.A.No.743 of 2013

SRA (CO)
CB(04/10/2021)