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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3379 of 2014

John Bosco

.. Appellant/Claimant

Vs.

1.M/s.Phoneix Machine Tools
No.1, High School Road
Manaveli, Ariyankuppam
Puducherry.

2.M/s.United India Insurance Company
No.13/A, Nethaji Road
Cuddalore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.04.2014 made in M.C.O.P.No.353 of 2010 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellant : Mr.R.Muralidharan
For R2 : Mr.C.Paranthaman

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 28.04.2014 made in M.C.O.P.No.353 of 2010 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

2.The appellant is claimant in M.C.O.P.No.353 of 2010 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.01.2009.

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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance



Company being insurer of the said bus to pay a sum of Rs.1,62,000/- 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 the appellant was running a driving school and was earning a sum of Rs.45,000/- per month. The appellant got appointment order in Credential Technologies Private Limited, Puducherry, just two days prior to the accident. The Tribunal erred in not taking into consideration the same for granting compensation. The Tribunal ought to have accepted the case of the appellant that he was running a driving school, got an appointment order and granted compensation excessively. The amounts awarded by the Tribunal under different heads are meagre. The reason given by the Tribunal for granting meagre amount as compensation is not correct and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has suffered only simple injuries. The appellant has not let in any evidence to prove that he lost income. The appellant has also not produced any documents to prove the avocation and income. The alleged appointment order cannot be relied on by the appellant as author of the said document was not examined. The Tribunal considered all the materials placed before it and granted compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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.

8. From the materials on record, it is seen that the appellant has claimed that he was running a driving school and was earning a sum of Rs.45,000/- per month. The appellant has not produced any materials to substantiate the same. The appellant has marked the appointment order as Ex.P8 to show that he was appointed as Manager of Credential Technologies Private Limited, Puducherry, on gross salary of Rs.30,000/- per month. He was asked to join on or before 01.02.2009. Due to the injuries suffered by him in the accident, he could not join as per the appointment order. The appellant has stated that he suffered fracture in both bones of left leg and has taken treatment as in-patient in hospital. P.W.2/Doctor examined



the medical records of the appellant, clinically examined the appellant and certified that the appellant has suffered 35% disability. The appellant has not produced any materials to show that he suffered loss of earning capacity and lost his income. In such circumstances, the Tribunal has granted compensation by applying percentage method by granting Rs.2,000/- per percentage of disability for 35% disability. The accident is of the year 2009 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (Rs.3,000/- X 35%). The appellant has not examined the author of Ex.P8/appointment order and therefore, the Tribunal did not accept the same. Considering the documents filed and date of accident, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of three months. Thus, a sum of Rs.36,000/- (Rs.12,000/- X 3) is awarded towards loss of income for three months.

8(ii). According to the appellant, he has taken treatment as in-patient in Jipmer Hospital, Puducherry, for fifteen days but he has not filed any discharge summary to prove the same. Considering the evidence of P.W.2/Doctor that the fracture of bones in left leg of the appellant is not properly joined, a sum of Rs.10,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal under all 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 or reduced
1.	Disability	70,000	1,05,000	Enhanced
2.	Extra nourishment	10,000	10,000	Confirmed
3.	Transportation	10,000	10,000	Confirmed
4.	Damage to clothes and articles	2,000	2,000	Confirmed
5.	Pain and suffering	35,000	35,000	Confirmed



6.	Loss of amenities and enjoyment of life	35,000	35,000	Confirmed
7.	Attendant charges	-	10,000	Granted
	Total	1,62,000	2,07,000	Enhanced by Rs.45,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,62,000/- is hereby enhanced to Rs.2,07,000/- 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.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge
Motor Accident Claims Tribunal
Cuddalore.

Copy To
The Section Officer
V.R. Section, High Court,
Chennai. (2 Copies)

+1cc to Mr.R.Muralidharan, Advocate, S.R.No. 41659
+1cc to Mr.C.Paranthaman, Advocate, S.R.No.42033

C.M.A.No.3379 of 2014

BS (CO)
GN (25/08/2021)