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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.3378 OF 2013
&
CIVIL MISCELLANEOUS APPEAL NO.57 OF 2014
AND M.P.NO.1 OF 2014

C.M.A.No.3378 of 2013

T.Parthiban ... Appellant/Claimant

..Vs..

1. C.Jayachandran

2. United India Assurance Co. Ltd.,
Chennai Regional Office,
Silingi Building, Motor Third Party Claims Hub,
No.134, Greams Road,
Chennai - 600006. ... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.07.2013 made in M.C.O.P.No.1630 of 2010 on the file of IInd Judge, Court of Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.V.Venkatesan

For Respondent No.2 : Mr.A.Dhiravianathan

C.M.A.No.57 of 2014

United India Assurance Co. Ltd.,
Chennai Regional Office,
Silingi Building, Motor Third Party Claims Hub,
No.134, Greams Road, Chennai - 600006.
... Appellant/2nd Respondent

..Vs..

1. T.Parthiban ...1st Respondent/Claimant

2. C.Jayachandran ... 2nd Respondent/1st Respondent

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PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.07.2013 made in M.C.O.P.No.1630 of 2010 on the file of IInd Judge, Court of Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Dhiravianathan

For Respondent No.1 : Mr.V.Venkatesan

COMMON JUDGMENT

Both the appeals are arisen out of the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1630 of 2010, dated 30.7.2013, the appeals are heard together and are being disposed of by common judgment.

2. The Civil Miscellaneous Appeal No.3378 of 2013, has been filed by the Claimant for enhancement of the compensation awarded by the tribunal in the order, dated 30.07.2013, made in M.C.O.P.No.1630 of 2010.

3. The Civil Miscellaneous Appeal No.57 of 2014, has been preferred by the Insurance company against the quantum of compensation awarded by the tribunal in the order, dated 30.07.2013, made in M.C.O.P.No.1630 of 2010.

4. For the sake of reference, claimant is stated as appellant herein and the Insurance Company is the respondent herein.

5. It is the case of the claimant that on 17.11.2009 at about 12.00 p.m, the claimant was engaged as an agricultural coolie to work in the fields to pick and throw the harvested paddy into the harvester machine mounted with the Tractor bearing no. TN-30-T-5738 belongs to the 1st Respondent therein, driven by its driver in a rash and negligent manner which went very close to the claimant, due to which the claimant's lungi (garment) caught in the machine and pulled him whereby the claimant sustained grievous injuries in the lower parts of the abdomen and in other private parts. The victim filed a claim petition before the tribunal, claiming compensation of Rs.10,00,000/- for the Permanent disability sustained by him in the said accident.

6. On the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to P10 were marked whereas on the side of the respondents, no witnesses were examined or any document was marked.

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7. The Tribunal, based on the oral and documentary evidence, has held that the respondent/Insurance Company being the insurer of the offending vehicle is liable to pay compensation to the claimant and awarded Rs.5,66,000/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Loss of earning capacity (Rs.4,500/- x 12 x 18 x 35%)	3,40,200/-
Mental agony and Pain and suffering	1,00,000/-
Loss of Income for 8 months (Rs.4,500/- x 8)	36,000/-
Transportation	10,000/-
Extra Nourishment	25,000/-
Damage to Clothes	1,000/-
Medical Expenses	48,800/-
Attendant Charges	5,000/-
Total :	5,66,000/-

8. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred the appeal in C.M.A.No.3378 of 2013. The insurer of the vehicle involved in the accident viz., United India Assurance Co. Ltd., the respondent herein has preferred an appeal in C.M.A.No.57 of 2014 both against liability and quantum of compensation awarded by the tribunal.

9. Heard the learned counsel appearing for the claimant/ appellant, the learned counsel appearing for the respondent/Insurance Company and perused the materials available on record.

10. According to the appellant, the appellant was a coolie and also obtained driving licence to drive vehicle. Monthly income of the claimant was specifically stated in the claim petition. The income of the claimant was Rs.250/- per day. However, the tribunal without considering the same, fixed the monthly income of the claimant as Rs.4500/- and awarded Rs.3,40,200/- towards loss of earning capacity.

11. According to the learned counsel appearing for the respondent/Insurance Company, the tribunal has wrongly adopted multiplier method for the disability sustained by the claimant.

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P.W.2 Dr.N.Saichandran deposed that he examined the claimant clinically and on the basis of Discharge summaries, assessed 40% permanent disability sustained by the claimant.

12. In RAJ KUMAR VS. AJAY KUMAR AND ANOTHER [(2011) 1 SCC 343] the Division Bench of the Hon'ble Supreme Court defined the meaning of disability, permanent disability, temporary disability and partial permanent disability as follows:

''Words and phrases - Disability - What is - Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being.''

''Words and phrases - Permanent disability - What is - Permanent disability refers to residuary incapacity or loss of use of some part of body, found at the end of treatment and recuperation, which is likely to remain rest for life of the injured - it can be either partial or total''.

''Words and phrases - Temporary disability - What is - Temporary disability refers to incapacity or loss of use of some part of body which will cease to exist at the end of treatment and recuperation.

''Words and phrases - Partial permanent disability - What is - it refers to a person's inability to perform some of the duties and bodily functions that he could perform before the accident.''

13. Applying the above said definition to the injury caused to the claimant, P.W.2 Doctor deposed that claimant's penis is deformed at scrotal region, scar aderance causing difficulty in passing urine and motion. Peno scrotal region looks disfigured and panel part deformed. His erection on scratching the both inner aspects on the thighs - poorly response. The petitioner walks with waddling gait (ie. Both lower limbs widening and external rotation), his marriage and sexual life may be constrained. Active standing work not possible. He has no sit with legs apart, the petitioner's disability is due to disfigurement and loss of skin and soft tissues and erection difficulty''.

14. P.W.2 Doctor has clearly stated the position of the claimant after he sustained permanent disability. There is no other contra evidence on the side of respondent/Insurance Company placed before the tribunal to disprove the statement of P.W.2. In the absence of rebuttal evidence on the side of Insurance Company, the evidence of P.W.2 has to be accepted and accordingly, the claimant sustained 40% permanent disability.

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15. The next contention of the claimant/appellant is that the tribunal has fixed monthly income of the claimant as Rs.4500/-. According to the appellant/claimant, the accident occurred in the year 2009. Even as per Minimum Wages Act, the claimant would have earned Rs.9000/- per month. Therefore, monthly income of the claimant fixed by the tribunal as Rs.4500/- is unfounded. On perusal of the materials, P.W.1 was examined and he deposed that the claimant was earned Rs.250/- per day as Coolie and in addition he also possessed driving licence at the time of accident. Taking note of the Minimum Wages Act and also the appellant was a Coolie at the time of accident, he would have earned Rs.250/- per day, i.e. Rs.7500/- would be monthly income of the appellant. The tribunal has wrongly fixed monthly income of the claimant as Rs.4500/-. Thus, it would be appropriate to fix Rs.7500/- as monthly income of the claimant. Since the petitioner is aged 25 years and considering the grievous injuries sustained by the appellant/claimant, multiplier method adopted by the tribunal is perfectly valid. Considering the age of the claimant/appellant i.e. 25 years and suffered 40% permanent disability in the vital organs due to which his future is bleak and his marriage life is also uncertain, therefore, by adding 40% to the monthly income towards future earning capacity, the monthly income of the claimant would be Rs.10,500/-. As per P.W.2, Doctor, the claimant/appellant sustained 40% permanent disability, loss of income of the claimant towards disability would be Rs.10,500 x 40% / 100 = Rs.4200/-. Since the petitioner is aged 25 years and considering the grievous injuries sustained by the appellant/claimant, the tribunal has rightly adopted 18 multiplier as per Sarala Varma case. Thus, compensation towards 40% permanent disability would be Rs.4200 x 12 x 18 = Rs.9,07,200/-. In sofar as other conventional heads are concerned, towards attendant charges, the award of the tribunal is enhanced from Rs.5000/- to Rs.10,000/-. Accordingly, the award of the tribunal is modified as follows:

Heads	Compensation Awarded by the tribunal Rs.	Compensation enhanced/awarded by this Court Rs.
Loss of earning capacity	4,500x12x18x 35% 3,40,200/-	10500x12x18x40% 9,07,200/-
Mental agony and Pain and suffering	1,00,000/-	1,00,000/-
Loss of Income for 8 months	(Rs.4,500/- x 8) 36,000/-	(Rs.7500 x 8) 60,000/-

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Heads	Compensation Awarded by the tribunal Rs.	Compensation enhanced/awarded by this Court Rs.
Transportation	10,000/-	10,000/-
Extra Nourishment	25,000/-	25,000/-
Damage to Clothes	1,000/-	1,000/-
Medical Expenses	48,800/-	48,800/-
Attendant Charges	5,000/-	10,000/-
Total :	5,66,000/-	11,62,000/-

Thus, the compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modifications, the award passed by the tribunal is confirmed.

16. The claimant/appellant is entitled to withdraw Rs.11,62,000/- (Rupees eleven lakhs and sixty two thousand only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The respondent/Insurance company is directed to deposit Rs.11,62,000/- along with interest at the rate of 7.5% p.a. from the date of petition till payment, within a period of six weeks from the date of receipt of copy of the judgment, after deducting the amount if any, already deposited before the tribunal. On such deposit being made by the respondent/Insurance Company, the claimant/appellant is entitled to withdraw the amount by filing appropriate application.

17. In fine, Civil Miscellaneous Appeal No.3378 of 2013 filed by the claimant is allowed to the aforesaid extent. C.M.A.No.57 of 2014 filed by the Insurance Company is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vaan

To

1. The IInd Judge, Court of Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.

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The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.V.Venkatesan, Advocate, S.R.No.19656

CIVIL MISCELLANEOUS APPEAL NO.3378 OF 2013,
CIVIL MISCELLANEOUS APPEAL NO.57 OF 2014
AND M.P.NO.1 OF 2014

RP(CO)
PBS/13/08/2021

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