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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.3888 OF 2019

V.Dhasarathan

... Appellant/Claimant

.Vs.

1. K.Balasubramanian

2. The Divisional Manager,
National Insurance Company Ltd.,
2nd Floor, Omalur Road,
Salem.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.08.2012 made in M.C.O.P.No.46 of 2011, on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.A.Sathish Kumar
For Mr.C.Thangaraju

For Respondent : Mr.J.Chandran for R2
No appearance for R1

JUDGMENT

The claimant is the appellant in this appeal. The claimant has filed this appeal for enhancement of compensation awarded by the Tribunal by its judgment and decree dated 06.08.2011 in M.C.O.P.No.46 of 2011 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Namakkal.

2. By the impugned judgment and decree, the Tribunal has awarded a sum of Rs.6,15,030/-. The appellant has filed this appeal for enhancement of compensation on the ground that the



Tribunal has considered disproportionately a low monthly income of Rs.4,500/- and as suo motu reduced the disability to 50% as against 68% assessed by the physician in the Ex.P9 disability certificate and as per the oral deposition of P.W.2.

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3. Defending the impugned judgment and decree, the learned counsel for the 2nd respondent/Insurance Company submits that the Tribunal has awarded just compensation and therefore submits that the award amount may be confirmed and appeal be dismissed. He submits that the Tribunal has wrongly awarded amount towards Loss of Income during treatment, Future Prospects etc.,.

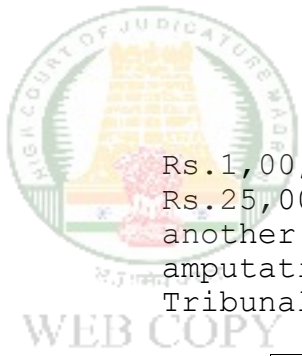
4. Heard the learned counsel for the appellant and the respondent and perused the impugned judgment and decree and the exhibits that were marked before the Tribunal.

5. The nature of injury suffered by the appellant indicates amputation of his right leg up to just below knee. The medical evidence on records and the deposition of P.W.2 indicates 68% permanent disability. As per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343, once there is permanent disability, the Court/Tribunal has to determine the functional disability with reference to the avocation.

6. The appellant was a cook (master) aged about 42 years at the time of accident. He stated that he was earning a sum of Rs.10,000 per month. In my view, the determination of functional disability at 50% appears to be correct assumption, considering the fact, the appellant can continue to be a master cook with the help of artificial leg.

7. However, it is noticed that the Tribunal has not awarded any amount towards permanent disability and has award compensation by considering a low monthly income of Rs.4,500/-. The accident is of the year 2010. Considering the same, I am inclined to consider the notional income of the appellant as Rs.8,000. On the aforesaid amount, there shall be a further addition of 25% towards future prospect.

8. The Tribunal has also considered wrong multiplier of 12. Considering the fact, that the appellant was aged about 42 years and the correct multiplier to be applied is 14. No amount has been awarded towards artificial leg and therefore a sum of



Rs.1,00,000/- has awarded towards the same. The amount of Rs.25,000/- awarded towards Pain and sufferings is enhanced by another 25,000/-, considering the fact, that there is a amputation of leg. Therefore, the compensation awarded by the Tribunal is re-computed as follows:-

Compensation due to permanent Disability $8,000 + 2,000 \times 12 \times 14 \times \frac{1}{2}$ *25% towards future prospects	Rs. 8,40,000
Pain and sufferings	Rs. 50,000
Artificial Leg	Rs. 1,00,000
Loss of amenities	Rs. 10,000
Total	Rs.10,00,000/-

9. The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.10,00,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of eight weeks from the date of receipt of a copy of this Judgment.

10. On such deposit being made by the 2nd respondent/ Insurance Company, the appellant/claimant is permitted to withdraw his share together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal.

11. This Civil Miscellaneous Appeal stands Partly Allowed with the above observations. No costs.

Sd/-

Deputy Registrar(P & A)

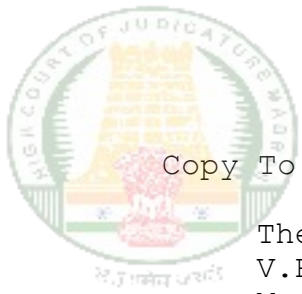
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Sub Assistant Registrar

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To

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



Copy To:-

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

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+2ccs to Mr.C.Thangaraju, Advocate, S.R.No.26287
+1cc to Mr.J.Chandran, Advocate, S.R.No.26872

C.M.A.NO.3888 OF 2019

KV(CO)
PBS/19/11/2021