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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. NO.1775 OF 2020

Venkatesan

.. Appellant/
Claimant

Versus

1. G.L.Shivaprakash
2. M/s. United India insurance Company Limited,
MO Office, rep. by its Manager,
at K.S. Building Door No.12/36 Gandhi Road,
Near Gowri Theater,
Udayarpalayam, Thammampatty Post,
Gangavalli Taluk, Salem, 636113.

.. Respondents/
Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 11.12.2018 made in MCOP.No.61/2017 on the file of Motor Accidents Claims Tribunal/Presiding Officer and Chief Judicial Magistrate, Perambalur.

For appellant	:	Mr.C.Vidhusan
For respondents	:	
for R1	:	set ex-parte before the Tribunal
for R2	:	Mr.S.Arun Kumar

J U D G M E N T

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Perambalur, in MCOP.No.61/2017, dated 11.12.2018,



the present appeal has been filed by the claimant for enhancement of the compensation amount.

3. It is the case of the appellant/claimant that, on 25.10.2016 at about 5.00 pm, he was riding a Honda Splendor Motorcycle bearing Registration No.TN 46 J 5072 on the Main Road near Periearikaadu at Arumbavur from South to North direction. At that time, a JCB 3DX Excavator Loader bearing Registration No.KA 17 P 0087, which belongs to the first respondent, insured with the second respondent, was coming from the opposite direction at a very high speed in a rash and negligent manner and dashed against the motorcycle driven by the claimant. Due to the impact, the claimant sustained injuries and the vehicle got damaged. Immediately, the petitioner was admitted as an in-patient at Ramya Hospital, Tiruchy from 25.10.2016 till 02.11.2016 and for further treatment, he was admitted as inpatient at Ganga Hospital, Coimbatore from 02.11.2016 till 09.11.2016. Thereafter, he continued his treatment in other Private Hospitals for a long period. Thus, he had spent huge amount towards medical treatment.

4. It is the further case of the claimant that he was a driver by profession and he was earning not less than Rs.15,000/- per month. On account of the accident, he is not able to continue his avocation. Hence, he made a claim for a sum of Rs.15,00,000/- as compensation.

5. The said claim petition was resisted by the Insurance Company by filing a counter statement denying the manner of the accident as projected by the claimant in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim, on the side of the claimant, the claimant examined himself as PW1, besides examining the Doctor, PW2, who issued disability certificate, and marked Exs.P1 to P18. On the side of the Insurance Company, one witness was examined as RW1 and no documentary evidence is produced.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to rash and negligent driving of the driver of JCB 3DX Excavator Loader bearing Registration No.KA 17 P 0087. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.7,38,560/- and directed the second respondent/Insurance Company to pay the above amount. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:



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S. NO.	Heads under which amounts are awarded	Amount in Rs.
1	Medical Expenses	3,53,000
2	Loss of Income	18,000
3	Disability and Loss of Earning Power	3,22,560
4	Transportation	20,000
5	Pain and Sufferings	20,000
6	Extra Nourishment	5,000
	Total Compensation	7,38,560

8. Now, the present appeal has been filed by the appellant/claimant questioning the quantum of compensation awarded by the Tribunal. It is the submission of the learned counsel for the appellant that the claimant was working as a driver and earning Rs.15,000/- per month. On account of the accident, he sustained grievous injuries and he is unable to walk and sit. Hence, he is not in a position to continue his avocation. Therefore, by taking a sum of Rs.15,000/- as monthly income of the claimant, the amount awarded under the head "Disability and Loss of Earning Power" has to be re-calculated. Further, the amounts awarded by the Tribunal under all the other heads are very meagre and the same needs proper enhancement.

9. Countering the said submissions, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal.

10. Heard the learned counsels appearing on both sides and perused the materials available on record.

11. On a perusal of records, it is seen that the claimant failed to prove his profession and income, and hence, the Tribunal rightly fixed a sum of Rs.6,000/- as notional monthly income of the claimant and also fixed the functional disability at 20%. Thus, the Tribunal, by taking the monthly income of the claimant at Rs.6,000/- and by adding 40% of the same towards future prospects, arrived the actual monthly income of the claimant at Rs.8,400/- [6,000 + 2,400]. Then, the annual income of the claimant was arrived at Rs.1,00,800/- [8,400 x 12]. Since the claimant suffered 20% functional disability, the loss of income due to disability was arrived at Rs.20,160/- [1,00,800 x 20%]. Considering the age of the claimant being 37 years at the time of the accident, by applying multiplier "16", the Tribunal arrived the "Disability and Loss of Earning Power" at Rs.3,22,560/- [20,160 x 16]. I do not find any infirmity in the

[illegible]

15. The amounts awarded by the Tribunal under all the other heads are fair and reasonable, and hence, they are confirmed. The total compensation payable to the claimant is re-calculated and tabulated below:

S. NO.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1	Medical Expenses	3,53,000	3,53,000
2	Loss of Income	18,000	18,000
3	Disability and Loss of Earning Power	3,22,560	3,22,560
4	Transportation	20,000	20,000
5	Pain and Sufferings	20,000	50,000
6	Extra Nourishment	5,000	15,000
7	Attender Charges	-	10,000
	Total Compensation	7,38,560	7,88,560

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the entire amount. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

17. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Chief Judicial Magistrate, Perambalur/
The Motor Accident Claims Tribunal
2. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.C.Vidhusan, Advocate, S.R.No.30348

+lcc to Mr.S.Arun Kumar, Advocate, S.R.No.30318.

C.M.A. No.1775 of 2020

BP(CO)
PM/25/04/2022