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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3345 of 2019

K. Govindaraj .. Appellant/Petitioner
Vs.

1.M. Mahalingam

2.Chief Manager,
Oriental Insurance Co. Ltd.,
New No.216, Old No.115, Prakasam Street,
Broad way, Chennai 600 108. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.03.2017, made in M.C.O.P. No.23 of 2016, on the file of the Special Sub Court, (Motor Accident Claims Tribunal) Cuddalore.

For Appellant : Mr.S.Udayakumar

For Respondents: No appearance (For R1)
Mr.G.Anandan (For R2)

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 09.03.2017, made in M.C.O.P. No.23 of 2016, on the file of the Special Sub Court, (Motor Accident Claims Tribunal) Cuddalore.

2.The appellant-claimant filed M.C.O.P. No.23 of 2016, on the file of the Special Sub Court, (Motor Accident Claims Tribunal) Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.09.2015.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Car belonging to the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.4,16,900/- as compensation to the appellant.

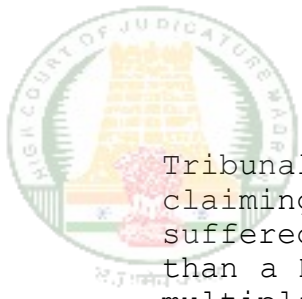
4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 09.03.2017, made in M.C.O.P. No.23 of 2016, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant was working as a Mason and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,500/- per month as notional income and granted only meagre amounts as compensation. The Medical Board examined the appellant and certified that the appellant suffered 77% disability. The Tribunal reduced the percentage of disability to 35% and granted lesser amount towards disability. The multiplier applied by the Tribunal is not correct. The Tribunal failed to grant any amount for future medical expenses and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant failed to prove his age, avocation and income. In the absence of any materials, the Tribunal fixed Rs.6,500/- per month as notional income and applied the multiplier '13', taking into consideration the age of the appellant as 50 years, as mentioned in the Accident Register. The Tribunal taking note of the fact that the appellant claimed stairs and came to the Court, fixed the percentage of disability at 35%. The appellant has not proved that he requires treatment in future. 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.

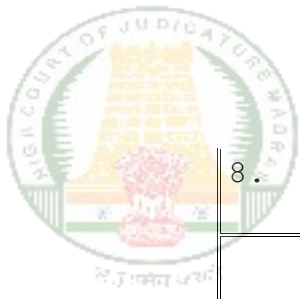
8.It is the case of the appellant that he was working as a Mason and was earning a sum of Rs.15,000/- per month. The appellant has not produced any materials in support of his case. In the absence of any materials, the Tribunal fixed a sum of Rs.6,500/- per month as notional income. The accident is of the year 2015. Considering the date of accident and nature of work done by the appellant, a sum of Rs.10,000/- per month is fixed as notional income. The Medical Board after examining the appellant, has fixed 77% partial permanent disability. The



Tribunal observed the appellant who came to the Court, by claiming stairs, to give evidence, held that the disability suffered by the appellant has improved and he can do other work than a Mason and fixed 35% as loss of earning power, applied the multiplier '13' and granted compensation towards loss of earning power. There is no error in the reasoning given by the Tribunal for fixing 35% as loss of earning power. Hence, the compensation granted by the Tribunal towards loss of earning power is modified to Rs.5,46,000/- [Rs.10,000/- x 12 x 13 x 35%].

9. For the injuries sustained in the accident, the appellant has taken treatment as in-patient at Puducherry JIPMER Hospital from 18.01.2015 to 30.01.2015. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken, a sum of Rs.10,000/- is awarded towards attendant charges. Due to the injuries sustained, the appellant would have suffered inconvenience. The Tribunal failed to award any amount towards loss of amenities. Considering the nature of injuries and disability suffered, a sum of Rs.15,000/- is awarded towards loss of amenities. The Tribunal has awarded a meagre sum of Rs.5,000/- towards extra nourishment. Considering the nature of injuries suffered by the appellant, the same is enhanced to Rs.10,000/-. 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 earning power	3,54,900/-	5,46,000/-	Enhanced
2.	Pain and suffering	30,000/-	30,000/-	Confirmed
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Damage to clothes	2,000/-	2,000/-	Confirmed
6.	Loss of amenities	-	15,000/-	Granted
7.	Medical expenses	15,000/-	15,000/-	Confirmed



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8.	Attendant charges	-	10,000/-	Granted
	Total	4,16,900/-	6,38,000/-	Enhanced by Rs.2,21,100/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,16,900/- is enhanced to Rs.6,38,000/- 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, 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.23 of 2016. 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

//True copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

Copy To

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

+1cc to Mr.S.Udayakumar, Advocate SR.No.3128

+1cc to Mr.G.Anandan, Advocate SR.No.3660

C.M.A.No.3345 of 2019

NMI (CO)
GMY (09/09/2021)