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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3476 of 2019

S.Shanmugam

.. Appellant/Claimant

Vs.

1.K.Selvaganesan

2.IFFCO Tokio General Insurance
Co. Ltd.

No.128, IV floor, IFFCO Bhavan
Habibullah Road, T.Nagar
Chennai-600 108.

.. Respondents/ Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.03.2019 made in M.C.O.P.No.4046 of 2015 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore.

For Appellant : Mr.S.Udayakumar

For R1 : No appearance

For R2 : Mrs.K.Saraswathi
for Mr.C.R.Krishnamoorthy

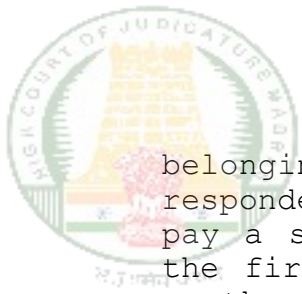
J U D G M E N T

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 08.03.2019 made in M.C.O.P.No.4046 of 2015 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore.

2.The appellant is claimant in M.C.O.P.No.4046 of 2015 on the file of Motor Accident Claims Tribunal, II Additional Sub Court, Cuddalore. He filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.09.2015.

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 omni 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.6,79,400/- as compensation to the appellant at the first instance and recover the same from the 1st respondent as the driver of the bus belonging to the 1st respondent did not have valid permit to drive the bus at the time of accident.

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 a wholesale merchant of vegetables and flowers and was earning a sum of Rs.35,000/- per month at the time of accident. The Tribunal without considering the same, erred in fixing notional income of the appellant as Rs.5,000/- per month. In the accident, the appellant suffered fractures on fibula and tibia bones and right leg. The Medical Board after examining the appellant, certified that the appellant has suffered 42% functional disability. The appellant has taken treatment as in-patient in MIOT Hospital, from 26.09.2015 to 10.10.2015 for 15 days. As per the discharge summary issued by the MIOT Hospital, the appellant was aged 50 years at the time of accident. The Tribunal erred in fixing age of the appellant as 55 years as per Ex,P2/Accident Register copy. The Tribunal has not awarded any compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

8. 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.

9. From the materials on record, it is seen that it is the contention of the appellant that he was a wholesale merchant of



vegetables and flowers and was earning a sum of Rs.35,000/- per month at the time of accident. The appellant failed to substantiate the same. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the appellant and granted 10% enhancement towards future prospects. The accident is of the year 2015 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- including future prospects is fixed as notional income of the appellant. The Tribunal fixed the disability of the appellant at 42% as assessed by the Medical Board, fixed age of the appellant as 55 years as per Ex.P2/Accident Register copy and applied multiplier '11', which are proper. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.4,43,520/- (Rs.8,000/- X 12 X 11 X 42/100).

9(i) The appellant has claimed a sum of Rs.2,96,613/- towards medical expenses and marked the medical bills issued by the MIOT Hospital as Ex.P7 to prove the same. The Tribunal awarded only a sum of Rs.2,94,438/- towards medical expenses on the ground that all the bills are not supported by medical prescriptions. The said reason is not proper. The appellant is entitled to a sum of Rs.2,96,613/- towards medical expenses as per Ex.P7/medical bills. The appellant has not produced any document to prove that he is still taking treatment. Therefore, the appellant is not entitled to any compensation towards future medical expenses. 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.	Loss of earning capacity	3,04,920	4,43,520	Enhanced
2.	Transportation	5,000	5,000	Confirmed
3.	Special diet	10,000	10,000	Confirmed
4.	Pain and suffering	30,000	30,000	Confirmed
5.	Loss of amenities	20,000	20,000	Confirmed



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6.	Loss of income during treatment period	15,000	15,000	Confirmed
7.	Medical bills Ex.P7	2,94,438	2,96,613	Enhanced
	Total	6,79,358	8,20,133	Enhanced by Rs.1,40,775 /-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,79,358/- is hereby enhanced to Rs.8,20,133/- 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 at the first instance and recover the same from the 1st respondent. 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.

s/d-
Assistant Registrar (CS VIII)

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Sub-Assistant Registrar

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To

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

2. The Section Officer
V.R. Section
High Court, Chennai.

+1cc to Mr.S.Udayakumar, Advocate, SR.No.3129

C.M.A.No.3476 of 2019

LN(CO)
PM(31/08/2021)