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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1972 of 2020

Kannan

.. Appellant/Petitioner

Vs.

1. Bala @ Balamurugan

2. Gunasekaran

3. The Branch Manager,
The New India Assurance Company Limited,
Karaikal,
Having Office at 1st Floor,
MAJ Appartments, No.149, Bharathiar Road,
Karaikal town and District Munsif.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.03.2020 made in M.C.O.P.No.166 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.K.Varadhakamaraj

For R3 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.With the consent of both the parties, this appeal is taken up for final hearing at the admission stage itself.



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3.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.03.2020 made in M.C.O.P.No.166 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

4.The appellant is the claimant in M.C.O.P.No.166 of 2014 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal. He filed the above said claim petition, claiming a sum of Rs.75,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.03.2014.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 2nd respondent and directed the 3rd respondent, insurer of the motorcycle to pay a sum of Rs.9,35,267/- as compensation to the appellant.

6.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

7.The learned counsel appearing for the appellant contended that at the time of accident, the appellant was aged 45 years was running A/C Service Center and doing 2nd Sales Business in the name and style of 'M/s. Haran Cool Service' and was earning a sum of Rs.1,000/- per day. In the accident, the appellant suffered multiple injuries and fracture. The Medical Board examined the appellant and certified that appellant suffered 54% disability. The Tribunal erroneously reduced the percentage of disability to 50% and fixed only 50% as functional disability. The Tribunal ought to have fixed that appellant suffered 100% loss of earning capacity and ought to have granted compensation separately for disability and loss of earning power. The Tribunal erroneously fixed meagre amount of Rs.15,000/- as monthly income of the appellant and deducted 50% towards personal expenses. The amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment and loss of income are meagre and prayed for enhancement of compensation.

8.Mr.J.Chandran, learned counsel takes notice for the 3rd respondent-Insurance Company and contended that the appellant has not proved that he suffered functional disability and lost his earning capacity. In the absence of any document with regard to functional disability, the Tribunal erroneously adopted multiplier method and granted compensation towards disability and the same is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.9,35,267/- as



compensation to the appellant, which is highly excessive and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

10. From the materials available on record, it is seen that it is the contention of the appellant that at the time of accident, he was aged 45 years was running A/C Service Center and was doing 2nd Sales Business in the name and style of 'M/s. Haran Cool Service' and was earning a sum of Rs.1,000/- per day. To prove the same, the appellant has produced copy of the Trade License as Ex.P12, which has expired three years prior to the accident, i.e., expired on 31.03.2011. The appellant has not produced any material to substantiate his claim that he was earning a sum of Rs.1,000/- per day. In the accident, the appellant suffered injuries and fracture and was referred to Medical Board. The Medical Board examined the appellant and certified that appellant suffered 54% disability. The Tribunal considering the disability certificate assessed by the Medical Board only for sensory loss, hearing loss and slow in movement to perform the avocation, held that there is no evidence that appellant has suffered complete incapacity to perform his avocation already he was doing. Having held so, the Tribunal fixed that appellant suffered 50% functional disability and applied multiplier method for awarding compensation towards disability. The appellant has not examined any Doctor to prove that he suffered functional disability and lost his earning capacity and he cannot do any work. There is no material to show that the appellant suffered functional disability and lost his earning capacity. In the absence of any material, the Tribunal erroneously adopted multiplier method and granted a sum of Rs.6,30,000/- for disability. In the absence of any materials, the Tribunal erroneously fixed 50% as functional disability and awarded compensation towards disability by adopting multiplier method, which is excessive. In view of the excess amount granted by the Tribunal towards disability, the appellant is not entitled to any enhancement.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.9,35,267/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the award amount 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, to the credit of M.C.O.P.No.166 of 2014 on the file of the Motor



Accident Claims Tribunal, District Court, Karaikal. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

krk

To

1. The District Judge,
Motor Accident Claims Tribunal,
Karaikal.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.371

+1cc to Mr.J.Chandran, Advocate, S.R.No.604

C.M.A.No.1972 of 2020

VBA(CO)
RLP(03/09/2021)