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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1964 of 2020

(Through Video Conferencing)

Prakashkumar

... Appellant

vs.

1. V.Seenivasan

2. The Oriental Insurance Co.,Ltd.,  
Motor Third Party Claims Office,  
No.115, Prakasam Salai,  
Broadway, Chennai 108.

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.11.2019 made in M.C.O.P.No.6005 of 2016 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes ) Chennai.

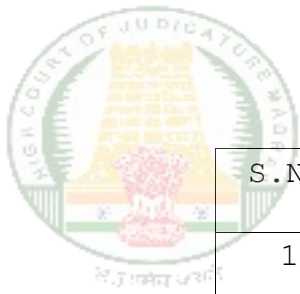
|                                |   |                    |
|--------------------------------|---|--------------------|
| For Appellant                  | : | Mr.K.Varadhakamraj |
| For 1 <sup>st</sup> Respondent | : | No Appearance      |
| For 2 <sup>nd</sup> respondent | : | Mr.D.Bhaskaran     |

#### J U D G M E N T

The claimant is the appellant in this civil miscellaneous appeal. He is filed this appeal for enhancement of compensation awarded by the Tribunal.

2. By the impugned Judgment and Decree dated 29.11.2019, the Motor Accident Claims Tribunal ( III Court of Small Causes) Chennai has awarded a sum of Rs.16,02,690/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant/claimant.

3. The break up of the amount awarded by the Lower Court are summarised below:-



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| S.No. | Heads                                    | Amount awarded by the Tribunal |
|-------|------------------------------------------|--------------------------------|
| 1     | Pain and suffering                       | Rs. 30,000                     |
| 2     | Transport and Extra nourishment expenses | Rs. 20,000                     |
| 3     | Loss of earning capacity                 | Rs. 12,09,600                  |
| 4     | Attender charges                         | Rs. 14,400                     |
| 5     | Medical Expenses                         | Rs. 3,07,691/-                 |
| 6     | Disability /Loss of Amenities            | Rs. 20,000/-                   |
| 7     | Damages to clothes                       | Rs. 1,000/-                    |
| Total |                                          | * Rs. 16,02,691/-              |

\*

Rounded off to Rs.16,02,690/-

4. Aggrieved by the said compensation, the appellant/claimant has filed this Civil Miscellaneous Appeal for enhancement of compensation.

5. The case of the appellant is that on 14.08.2016, while the appellant was riding a motorcycle bearing Reg.No.TN.05.AS.4422, the driver of the insured Tata Ace Van bearing Reg.No.TN.20.BM.7891 belonging to the 1<sup>st</sup> respondent insured with the second respondent was driven allegedly by its driver in a rash and negligent manner from the same direction and dashed against the two wheeler, due to which impact, the appellant fell and sustained grievous injuries.

6. In this appeal, the claimant has sought for further enhancement of compensation on the ground that the Tribunal has wrongly considered the monthly income of the appellant as Rs.10,000/-, even though, the appellant was earning a sum of Rs.15,000/- p.m.

7. Defending the impugned Judgment and decree, the learned counsel for the second respondent - Insurance company submits that the impugned Judgment and decree is well reasoned and requires no interference.

8. He further submits that the appellant has not produced any material evidence to prove the avocation and income of the appellant. In absence of any material evidence with regard to



avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the appellant and has also awarded 40% future prospects which is not meagre. Therefore, he prayed for dismissal of the appeal.

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9. I have considered the arguments advanced by the learned counsel for the appellant and the respondent. I have also perused the evidence on record and the impugned Judgment and Decree awarding the aforesaid compensation to the appellant/claimant.

10. In my view, the notional income of the appellant as Rs.10,000/- p.m. considered by the Tribunal appears to be low. The accident is of the year 2016. Therefore, the notional income of the appellant can be considered as Rs.12,500/- p.m. for the purpose of computation of compensation. Similarly, the amount awarded towards loss of amenities can be partially enhanced to Rs.40,000/- from Rs.20,000/-. Accordingly, the compensation awarded by the Tribunal is re-computed as follows:-

| Heads                                                                                                                                                                                                                                 | Amount                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Monthly income :<br>Rs. 12,500/-<br>Add: Future prospects at 40% : Rs.<br>5,000/-<br>-----<br>Rs.17,500/-<br><br>Annual Income (Rs./17,500x12) :<br>Rs.2,10,000/-<br>Loss of earning<br>Rs.2,10,000/- x 18x40/100 :<br>Rs.15,12,000/- | Rs. 15,12,000/-                                    |
| Pain and suffering                                                                                                                                                                                                                    | Rs.30,000/-                                        |
| Transport and extra nourishment                                                                                                                                                                                                       | Rs. 20,000/-                                       |
| Medical expenses                                                                                                                                                                                                                      | Rs. 3,07,691/-                                     |
| Attender charges                                                                                                                                                                                                                      | Rs. 20,000/-                                       |
| Loss of amenities due to disability                                                                                                                                                                                                   | Rs.<br>40,000/-                                    |
| Damage to clothes                                                                                                                                                                                                                     | Rs.<br>1,000/-                                     |
| Total                                                                                                                                                                                                                                 | Rs.19,30,691/-<br>Rounded off to<br>Rs.19,31,000/- |



11. Therefore, the 2<sup>nd</sup> respondent - Insurance Company is directed to deposit the re-quantified amount of compensation of Rs.19,31,000/- together with interest at 7.5% from the date of claim petition till the date of such deposit to the credit of M.C.O.P.No.6005 of 2016 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes) Chennai, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit, the appellant /claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No costs.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Motor Accident Claims Tribunal  
(III Court of Small Causes ) Chennai.

2. The Section Officer,  
VR Section,  
High Court, Madras - 104.

+1cc to Mr.K.Varadhakamraj, Advocate, S.R.No.24566

C.M.A.No.1964 of 2020

BP[co]  
NSK/09/06/2022