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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1421 of 2017

Jayaraman

...Appellant/Petitiner

Vs

1.Raja Velu
2.Gousakan
3.The Branch Manager,
The National Insurance Company Ltd.,
12, K.K.Road,
Muruga Theater Complex,
Villupuram.

4.The Branch Manager,
The New India Assurance Company Ltd.,
Thiru.Vi.Ka.Road,
Villupuram.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.04.2013 made in M.C.O.P.No.417 of 2007 on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Court, Villupuram.

For Appellant : Mr.D.S.Thirumavalavan

For Respondents : No Appearance for R1
R2 not ready notice
Mrs.R.Sreevidhya for R3
Mr.J.Michael Viswasam for R4

J U D G M E N T

The appeal is filed by the accident victim for enhancement of compensation.

2. The claimant while travelling in the first respondent bus bearing Registration No.TN 31 F 6607 from Kallipattu to Villupuram, the said bus dashed against a van bearing Registration No.TN 31 V 3232 owned by the second respondent. Both the vehicles were under insurance coverage by the



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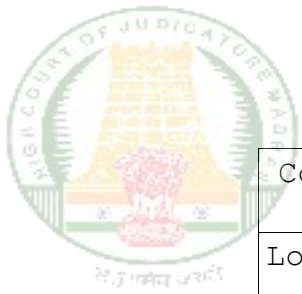
respondents 3 and 4 respectively. According to the claimant, in the accident, he sustained injury in his right eye and lacerated wound over the body. A claim petition seeking compensation of Rs.20,00,000/- was filed against the owners of the bus and van and the respective insurance company.

3. The Tribunal fixed the responsibility for causing the accident on the driver of the bus as well as the van driver in the ratio 75:25. Taking note of the wound certificate and the disability certificate, the Tribunal awarded a total sum of Rs.60,000/- with 7.5% interest from the date of numbering the petition till the date of realisation.

4. In the appeal, it is contended that the Tribunal has failed to consider the fact that the disability has caused loss of eye sight and being an agriculturist and a business man in sand and jelly, the income of the claimant is substantially lost due to the functional disability.

5. This Court on perusing the medical records of the claimant particularly the medical report given by Aravind Eye Hospital, Pondicherry, which is marked as Ex.P15 finds that the USG B Scan right eye showed dense clumpy vitreous opacity in inferior quadrant suggestive of vitreous haemorrhage. On 19th October 2019, his best corrected visual acuity was 6/60 in right eye and 6/6 in left eye. Fundus showed Chronic Cystoid Macular Degeneration in right eye. The doctor who has subsequently examined him on 14.11.2011 had opined that the said injury had caused 30% total permanent disability. During the cross-examination, the said doctor has said that the said percentage is only to that part of the body not for whole body.

6. Taking into account the above evidence, this Court is of the view that due to the accident, the claimant has lost his right eye vision substantially, which has caused functional disability and impairment to his earning capacity. At the time of accident, the claimant was 43 years old. He has not produced any evidence to show his monthly income. The accident occurred in the year 2007, so the notional income of Rs.3000/- plus 40% towards future prospects is taken as his monthly income. Since there is loss of right eye vision, functional disability is fixed at 15%. Applying multiplier '15', the compensation towards loss of income is arrived at (4200X15/100X12X15). Accordingly, the award of the Tribunal is enhanced as below:



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Compensation under Various Heads	Award passed by this Court
Loss of income due to 15% functional disability (4200X15/100X12X15)	Rs.1,13,400/-
Pain and Suffering	Rs. 20,000/-
Loss of income during the treatment period (3000X3)	Rs. 9,000/-
Transport to hospital	Rs. 5,000/-
Medical Bill	Rs. 10,000/-
Loss of amenities	Rs. 6,000/-
Nourishment and damages	Rs. 4,000/-
Total	Rs.1,67,400/-

7. The said amount with interest at the rate of 7.5% p.a. from the date of numbering the petition till the date of realisation shall be paid by the respondents 3 and 4 in the ratio of 75:25. The award amount shall be deposited within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amount on appropriate application.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To
Motor Accidents Claims Tribunal
I Additional Subordinate Court,
Villupuram.

+ 1 cc to Mr.J.Michael Visuvasam, Advocate (SR.No.11794)
+ 1 cc to Mr.D.S.Thiruma Vallavan, Advocate (SR.No.11926)
+ 1cc to R.Ravichandran, Advocate (SR.No.12428)

CMA NO.1421 OF 2017

CP (CO)
PR (04/08/2021)