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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A. No.2462 of 2021

R.Gopi ...appellant/Petitioner

Vs.

1. K.Arumugam

2. The Oriental Insurance Co. Ltd.,
No.115, Broadway,
Chennai 600 108.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 04.08.2020 made in MCOP.No.2249 of 2014 on the file of the Motor Accident Claims Tribunal/Small Causes Court, Special Sub Judge No.I, Chennai

For appellant : Mr.K.Varadha Kamaraj

For respondents

for R1 : Notice served - No Appearance

for R2 : Mr.P.Kandasamy

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/Small Causes Court, Special Sub Judge No.I, Chennai in MCOP.No.2249 of 2014, the claimant has come up with this appeal seeking enhancement.

2.The brief facts of the case are:-

On 12.05.2013 at about 9.00 hours, the claimant after alighting from the Van bearing Registration No.TN-21-AY-7312 at ECR Kadapakkam Koot Road, was standing behind it. The driver of the said Van, without knowing the same took the vehicle in reverse direction and ran over the left foot of the petitioner.



Due to which, the claimant sustained crush injuries and his toes were amputated. Hence, he made claim against the owner of the vehicle as well as its insurer seeking for a compensation of Rs.15,00,000/-.

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3.The Insurance Company filed their counter statement disputing the manner of accident as projected by the claimant, age, occupation and income of the claimant and their liability to pay the compensation.

4.To substantiate his case, he examined himself as PW1, besides examining PW2 and marked 14 documents as Exs.P1 to P14. Disability Certificate issued by the Medical Board was marked as Ex.C1 as Court document. On the side of the Insurance Company, an official from Insurance Company was examined as RW1 and marked Exs.R1 & R2.

5.The Tribunal after analysing the entire evidence came to the conclusion that the accident had occurred due to the negligent act of the driver of the Van. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.2,10,000/- and directed the Insurance Company to pay the above compensation.

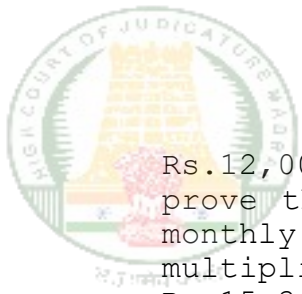
6. The main contention of the learned counsel for the claimant is that considering the injuries suffered by the claimant, the Tribunal ought to have applied multiplier method while calculating Loss of Disability, instead of awarding Rs.3,000/- per percentage of disability.

7.Per contra, the learned counsel for the Insurance Company submitted that based on Ex.C1 Disability Certificate, the Tribunal rightly fixed the disability of the claimant at 30% and awarded a fair and reasonable compensation, which needs no interference of this Court.

8.Heard the rival submissions and perused the materials available on record.

9.From the perusal of records, it is seen that, at the time of the accident, the claimant was aged about 33 years and working as a Painter. Due to the accident, he could not walk or stand for a long time and unable to do his painting job. On account of the disability suffered by him, certainly he would have suffered certain percentage of loss in his earning capacity. Therefore, we opine that the claimant is entitled for compensation under the head "loss of earning power" by applying multiplier method.

10.It is the case of the claimant that he was earning



Rs.12,000/- per month. But he has not produced any material to prove the same, hence, the Tribunal rightly taken Rs.8,000/- as monthly income. Considering the age of the claimant, the proper multiplier 16 is applied and the loss of income works out to Rs.15,36,000/- [8,000 x 12 x 16]. Since the claimant suffered 30% disability, the Loss of Earning Capacity is arrived at Rs.4,60,800/- [15,36,000 x 30/100].

11. Since the claimant suffered only 30% disability and compensation is awarded in this appeal, the amounts awarded under the head Loss of Future Prospects, is set aside. Further, considering the injuries sustained by the claimant and the period of treatment undergone by the claimant as an inpatient, this Court awards Rs.50,000/- towards Loss of Amenities; and enhances the amounts awarded under the heads Pain and Sufferings and Attender Charges to Rs.40,000/- and Rs.20,000/-, respectively. In addition to that, the amounts awarded towards Transportation and Extra Nourishment, viz., sum of Rs.5,000/- awarded Rs.20,000/-, respectively are confirmed. In total, the claimant is entitled to Rs.5,95,800/-, which is rounded off to Rs.6,00,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S.N o.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
1.	Disability	90,000	-
2.	Pain and Sufferings	30,000	40,000
3.	Transportation	5,000	5,000
4.	Extra Nourishment	20,000	20,000
5.	Attender Charges	11,000	20,000
6.	Loss of Earnings/ Loss of Earning Capacity	24,000	4,60,800
7.	Loss of Future Prospects	30,000	-
8.	Loss of Amenities	-	50,000
	Total Compensation	2,10,000	5,95,800 rounded off to 6,00,000

12. In fine, the sum of Rs.2,10,000/- awarded by the Tribunal is enhanced to Rs.6,00,000/-. The Insurance Company is directed



to deposit the above modified award amount with accrued 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. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with accrued interest. The claimant shall pay necessary Court fee, if any on the enhanced compensation.

13. With the above directions, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jer/pvs

To

The Motor Accidents Claims Tribunal,
The Small Causes Court,
Special Sub Judge No.I,
Chennai

Copy To

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

+1cc to Mr.K.Varadhakamaraj, Advocate, Sr.No.18494

C.M.A. No.2462 of 2021

SSI (CO)
RGA(07/06/2022)