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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :08.03.2022

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

C.M.A.No.2117 of 2021

Suresh @ Munusamy,

(Since the petitioner is mentally not fit due to head injuries
represented by his mother & NF Mrs.Vijaya

... Appellant/Petitioner

vs.

1. Kumar

2. The Iffco Tokio General Ins Co.Ltd,
No.128, Habibullah Salai, Iffco-Bhavan,
T.Nagar, Chennai - 17.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to enhance the amount awarded in M.C.O.P.No.5217 of 2016 dated 18.11.2020 on the file of Motor Accident Claims Tribunal, (Special Sub Court No.1), Small Causes Court, Chennai as prayed for with interest and cost.

For Appellant : Mr.K.Varadhakamaraj

For Respondents: Mr.M.Jayaraj for R2

JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM, J.,)

This Civil Miscellaneous Appeal has been filed by the injured claimant, seeking enhancement of compensation.

Facts in brief:-

2.It is the case of the claimant that on 06.04.2015 at about 06.30 hours, he was riding a Motor cycle bearing Registration No.TN 18 S 3702 from Vandavasi to Tindivanam. At that time, the rider of the another Motor cycle bearing Registration No.TN 25 AT 4489 came in a high speed and hit against him. In the accident, he suffered injuries. He filed the claim petition in M.C.O.P.No.5217 of 2016 against the owner



as well as the insurer of the offending Motor cycle, seeking compensation of Rs.2 Crores.

3. On appreciation of evidence adduced by the parties, the Tribunal held that the accident had occurred, due to the negligence of the driver of the offending vehicle and awarded compensation of Rs.31,80,200/-, together with interest at the rate of 7.5% per annum from the date of claim petition, till the date of realization.

4. Not being satisfied with the award, the present appeal has been filed.

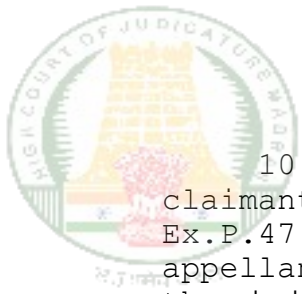
5. Mr. K. Varadha Kamaraj, learned counsel appearing for the appellant/claimant would state that though the Tribunal has fixed the salary of the injured claimant, based on the evidence of P.W.3 and Ex.P.31, 32, 33 and 47 at Rs.13,866/-, no addition was made towards the future prospectus. It is further submitted that the Tribunal has not awarded any amount towards the heads 'loss of amenities' and 'loss of marriage prospectus'.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance company - Mr. M. Jayaraj would argue that the appellant has not produced any evidence to show that he was not able to continue his employment and in the case of injury, the claimant is not entitled for addition towards future prospectus and hence the appellant is not entitled for enhancement in this appeal.

7. We have carefully considered the submission made by the learned counsels.

8. In the instant case, the finding on negligence has reached finality as the respondents have not filed any appeal, challenging the decision of the Tribunal. Mother of the injured gave evidence as P.W.1 stating that the injured was working as Service Engineer in First Energy Private Limited at Pune and his monthly salary is Rs.24,650/-. P.W.3 is the employer and to corroborate with the evidence of P.W.1, through whom Ex.P.47 - Salary Certificate was marked.

9. We find force in the contention of the learned counsel appearing for the respondent. As a matter of course or in a routine manner addition is not to be made in injury cases for future prospectus. However, taking note of the extent of disability and the nature of employment, claimant may be entitled for addition towards future prospectus. In the instant case, it has been proved that the injured claimant has lost his earning capacity.



10. The Tribunal has fixed the salary of the injured claimant as Rs.13,866/- based on the evidence of P.W.3 and Ex.P.47. As rightly contended by the learned counsel for the appellant, no addition was made towards the future prospectus of the injured claimant. As per the decision of the Hon'ble Apex Court in the case of National Insurance Co., Ltd., Vs. Pranay Sethi and others, the claimant is entitled for 40% towards future prospectus and hence the salary is fixed as Rs.19,320/- (Rs.13,800/- + Rs.5,520/-). Considering the age of the claimant, proper multiplier would be '17'. Disability Certificate marked as Ex.C.1 issued by the Medical Board shows that the claimant suffered permanent disability of 94 %. Hence, loss of earning capacity is assessed as Rs.37,04,803/- (Rs.19,320/- x 12 x 17 x 94/100). The Tribunal has awarded Rs.1 lakhs towards loss of future prospectus. In our considered opinion, the claimant is not entitled for the said amount and hence it is set aside. The amounts awarded under the heads, pain and suffering, Rs.50,000/-, Transportation - Rs.5,000/-, Medical expenses - Rs.3,28,983/- and Extra nourishment - Rs.25,000/- are confirmed. Considering the fact that the claimant is still under treatment, this court enhances the amount of Rs.12,250/- to Rs.1 lakh under the head 'attendant charges'. In addition to that a sum of Rs.1 lakh is awarded for 'loss of amenities' and another Rs.1 lakh is awarded towards the head 'loss of marital prospectus'. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced or granted
1.	Pecuniary Loss	26,58,944/-	37,04,803/-	enhanced
2.	Pain and Sufferings	50,000/-	50,000/-	confirmed
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Medical expenses	3,28,983/-	3,28,983/-	confirmed
5.	Extra nourishment	25,000/-	25,000/-	Confirmed
6.	Attender Charges	12,250/-	1,00,000/-	enhanced
7.	Loss of future prospects	1,00,000/-	---	Set aside
8.	Loss of amenities	---	1,00,000/-	granted



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9.	Loss of marital prospectus	---	1,00,000/-	granted
	Total	31,80,177/-	44,13,786/- rounded off to 44,13,700/-	Enhanced by Rs.12,33,523/-

11. In fine, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.31,80,177/- is enhanced to Rs.44,13,700/- along with interest at the rate of 7.5% from the date of claim petition, till the date of realization and costs. The 2nd respondent/Insurance company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount, along with interest and costs, less the amount already withdrawn if any. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge, No.I,
The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

+2cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.15626

C.M.A.No.2117 of 2021

KK(CO)
SB(22/06/2022)