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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM:

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

C.M.A.No.4128 of 2019

R. Vajravel ... Appellant/Claimant

Vs.

1. V.Malarvizhi

2. United India Insurance Co. Ltd,
104-A, Peramanur Main Road,
Peramanur, Salem.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the award dated 05.06.2018 in MCOP No.244 of 2015 on the file of the Motor Accident Claims Tribunal and Special Sub Judge No.2, Salem.

For Appellant : Mr.A.Sathishkumar
for Mr.C.Thangaraju

For Respondents : Mr.C.Paranthaman for R2
No appearance for R1

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal has been preferred by the claimant in MCOP No.244 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.2, Salem, seeking enhancement of compensation.

2.The facts of the case in nutshell:-

This is the case of injury. On 16.11.2014, at 11.00 p.m, the claimant Vajravel was riding his Passion Pro motorcycle bearing Reg.No.TN-33-AP-7337 on Bavani - Mettr Main Road. When he was nearing Union Kottai Amman Kovil, a Tipper lorry bearing Reg.No.TN-30-S-3813 driven by its driver in a rash and negligent



manner, dashed his vehicle. In the accident, he sustained grievous injuries and suffered permanent disability. At the time of accident, he was a weaver and having power-looms and thereby, he was earning Rs.25,000/- per month. The respondents 1 and 2 are the owner and the insurer of the of the Tipper Lorry. Alleging that the accident had occurred only due to the rash and negligent driving of the driver of the Tipper Lorry, the claimant laid a claim petition before the Tribunal claiming compensation of Rs.25,00,000/-.

3.The claim petition was resisted by the second respondent Insurance Company contending that the accident had occurred due to the negligence of the claimant and the Insurance Company is not liable to pay compensation.

4.During the Trial, both parties have adduced oral and documentary evidence. Upon consideration of evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the Tipper Lorry and awarded compensation of Rs.21,62,908/- together with interest at the rate of 7.5% per annum. Being dissatisfied with the award, the claimant is before this Court.

5.Mr.C.Thangaraju, learned counsel appearing for the appellant/claimant would submit that the accident had took place in the year 2014 and at that time, the appellant was the weaver and owner of a powerloom factory and thereby, he was earning Rs.25,000/- per month, but the Tribunal without considering the same, arbitrarily fixed the income at Rs.6,500/- and awarded Rs.7,54,065/- towards loss of earning capacity, which is very meager. He would further submit that the appellant had undergone various surgeries for head and chest injuries right femur and left fibular and the Coimbatore Medical Centre had issued an estimate for future medical charges for Rs.3,00,000/-, however, the Tribunal had not taken into consideration about the future medical expenses. He would further submit that the Tribunal has not awarded sufficient amount under the head of pain and suffering, loss of amenities and attendant charges, hence, he seeks enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the impugned award granting the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

7.We have considered the rival submissions of the learned counsel appearing on either side and perused the materials available on records.



8. In the instant case, the accident had taken place in the year 2014. Even though the claimant is the owner of the powerloom factory, he was working as a weaver in his factory, but the Tribunal without considering the same, fixed the notional income of the claimant as Rs.6,500/-. We are of the view that the monthly income fixed by the Tribunal is very low. Hence, considering the price index prevailing in the year 2014, this Court fixes the monthly notional income of the claimant as Rs.9,000/-. As per the decision of Pranay Sethi (cited supra), the claimant is entitled to 25% addition as future prospects. The claimant suffered 52% disability, which is proved by Ex.P.14. Hence, after adding 25% of the income and by applying multiplier '15', this Court here awards Rs.10,53,000/- ($9000 + 2250(25\%) = 11250 \times 12 \times 15 \times 52 / 100$) towards loss of earning capacity. Further, considering the age of the injured, the nature of injuries sustained by him and the period of treatment, the amount of Rs.50,000/- awarded under the head of pain and suffering is enhanced to Rs.1,00,000/-; the amount of Rs.50,000/- awarded under the head of loss of amenities is enhanced to Rs.1,00,000/- and the amount of Rs.25,000/- awarded under the head of attendant charges is enhanced to Rs.1,00,000/-. Further, the amounts awarded under the head of medical expenses, extra nourishment, transportation and damage of cloths are confirmed. That apart, this Court awards Rs.50,000/- towards future medical expenses. The rate of interest fixed by the Tribunal as 7.5% is unaltered. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of earning capacity	7,54,065/-	10,53,000/-	enhanced
Pain and Suffering	50,000/-	1,00,000/-	enhanced
Loss Amenities	50,000/-	1,00,000/-	enhanced
Medical Expenses	12,53,343/-	12,53,343/-	confirmed
Transportation	15,000/-	15,000/-	confirmed
Extra nourishment	15,000/-	15,000/-	confirmed



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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Attendant charges	25,000/-	1,00,000/-	enhanced
Damage of Cloths	500/-	500/-	confirmed
Future medical expenses	Nil	50,000/-	granted
Total	21,62,908/-	26,86,843/-	
Rounded off		26,87,000/-	5,24,092/- is enhanced

9. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the amount together with proportionate interest and costs. No costs.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
and Special Sub Judge No.2, Salem.

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

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.3119

+2ccs to Mr.C.Thangaraju, Advocate, S.R.No.2946

C.M.A.No.4128 of 2019

RSV(CO)
SU(31/03/2022)