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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	04.02.2022
DELIVERED ON	14.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.1089 of 2011

M.Thangapandi

...Appellant/Petitioner

Vs.

1.T.Karthick Kumar

2.The Branch Manager,

The Oriental Insurance Company Limited,

1st Floor, Loyola Building,

Salai Road, Dindigul - 1.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and decree made in M.C.O.P.No.203 of 2005 on the file of the learned Motor Accident Claims Tribunal (Fast Track Court), Dindigul, dated 13.11.2007 and enhance the award amount.

For Petitioner :Mr.D.Venkatash

For R-2 :Mr.C.Jawahar Ravindran

For R-1 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to enhance the award amount passed by the learned Motor Accident Claims Tribunal (Fast Track Court), Dindigul, in M.C.O.P.No.203 of 2005, dated 13.11.2007.

2.It is a case of accident. On 20.03.2005, morning at 3.30 a.m., the claimant was travelled in a Bajaj Minidoor Van bearing Regn.No.TN 57 F 4640, to collect cucumber as field officer of Annai Agro farm. The driver of van drove the vehicle with rash and negligent manner and hence, the van was capsized. The claimant sustained grievous injuries and his left leg was amputated. In the said accident, the claimant sustained permanent disability.



3.The claimant has filed a petition in M.C.O.P.No.203 of 2005 on the file of the learned Motor Accident Claims Tribunal (Fast Track Court), Dindigul, seeking compensation.

4.Before the Tribunal, on the side of the claimant three witnesses were examined as P.W.1 to P.W.3 and marked thirteen documents as Exs.P.1 to P.13 and one witness was examined as R.W.1 and Ex.R.1 was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondent and also on appreciating the evidences on record, directed the 1st respondent herein/owner of the vehicle to pay a sum of Rs.1 Lakh, as compensation.

6.Heard on either side. Perused the material documents available on record.

7.This Civil Miscellaneous Appeal is filed by the claimant on the ground that as per section 147(2)(i) the claimant has to treat as authorized representative of the owner of the goods and therefore the tribunal ought to have fixed liability upon the insurance company. The award amount is very meager and hence, the amount awarded by the tribunal is liable to be set aside.

8.The Appellant/claimant has filed the claim petition in M.C.O.P.No.203 of 2005 seeking compensation for the injuries sustained by him in road accident on 20.03.2005, when he was travelled in a Van TN 57 F 4640, to collect cucumber seed as field officer of Annai Agro farm, the driver of the van drove the vehicle in rash and negligent manner. So, the van was capsized. The claimant has sustained grievous injuries and his left leg was amputated. Since, the claimant was travelled in the van as representative of owner of goods, the tribunal has fixed liability on the owner of the vehicle and awarded a sum of Rs.1 Lakh, as compensation.

9.To enhance the award amount, the claimant has filed this Civil Miscellaneous Appeal.

10.The First Information Report and charge sheet were filed against the driver of the Bajai Mini door vehicle bearing Regn.No.TN-57-F-4640. To the negligence of the driver, P.W.3 was examined as eye witness.

11.As per evidence of P.W.3, the claimant was working as field worker in Annai Agro Farm and earned a sum of Rs.3000/-p.m., as salary. Since his leg was amputated, he could not work. From the evidence of P.W.3, no work was assigned to him since his leg was amputated. Therefore, the tribunal should have applied multiplier to calculate the income of the claimant.



12.The learned counsel appearing for the 2nd respondent/insurance company contended that since the claimant was travelled as gratuitous passenger, the insurance company is not liable to pay compensation.

13.As per Ex.P.10, the claimant's company has purchased cucumber seeds. There is no contra evidence by the insurance company and therefore, R-2/insurance company is liable to pay compensation.

14. At the time of the accident, the claimant was aged about 22 years. He earned a sum of Rs.3000/-p.m. Therefore, 40% for the future prospectus to be added. Personal expenses 1/3 to be deducted. There is no evidence for medical expenses and future medical expenses.

Loss of income Rs.3000/- + 30% - 1/3= Rs.2,800/-

2800 x 12 x 18 x 60/100	= Rs.3,62,880/-
Pain & suffering for amputation of leg	= Rs. 50,000/-

Total **=Rs.4,12,880/-**

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

15.In view of the said modification, this Civil Miscellaneous Appeal is allowed, and the award amount of **Rs.1 Lakh**, granted by the learned Motor Accident Claims Tribunal (Fast Track Court), Dindigul, is enhanced to **Rs.4,12,880/-**with 7.5%. The R-2/insurance company is directed to deposit the entire award amount as awarded by this Court, within a period of six weeks, from the date of receipt of copy of the order. After depositing, the claimant is permitted to withdraw the award amount with interest. The interest is to be waived for default period, if any. The claimant is directed to pay deficit Court fee, if any. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

The Additional District & Sessions Judge,
Motor Accident Claims Tribunal /
(Fast Track Court),
Dindigul.

Copy

- 1.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Sub Assistant Registrar(CO),
Madurai Bench of Madras High Court,
Madurai.

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RK(22/03/2022) 4P 5C