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C.M.A.No.3537 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.3537 of 2019

K.C.Gokulnathan

...Appellant

Vs

1.Vijayrangan
2.Saiath Musthafa
3.The Manager,
Oriental Insurance Company Ltd.,
Rep by its Manager,
Sathuvachari, Vellore 9

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award in judgment and decree dated 12.07.2018 made in M.C.O.P.No.228 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore District.

For Appellant : Mr.M.Sivakumar

For Respondents : Mr.K.Vinod for R3
No appearance for R1 and R2



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JUDGMENT

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This Civil Miscellaneous Appeal is filed to enhance the award in judgment and decree dated 12.07.2018 made in M.C.O.P.No.228 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore District.

2. The learned counsel appearing for the appellant would submit that this appeal was initially filed by the appellant challenging the 10% liability against the appellant/claimant for non-production of driving license and quantum of compensation. However, now the learned counsel for the appellant would fairly submit that he is not pressing the fixation of liabilities and he is pressing only with regard to quantum of compensation.

3. After hearing the parties, this Court is inclined to interfere only with regard to the failure of Tribunal in fixing the loss of income due to disability without future prosperous, which is contrary to the law laid down by the Hon'ble Supreme Court in *National Ins. Co. v. Pranay Sethi & others* reported in **2017 (2) TNMAC 609 (SC)**.



4. Therefore, this Court is of the considered view that since the age of the injured was 28 years at the time of accident, which was occurred on 07.04.2011 future prosperous has to be calculated 40%. In the present case, since the claimant is working as a police constable, the said future prosperous shall be fixed as 50%.

5. The learned counsel appearing for the insurance company has also clarified the legal position laid down by the Hon'ble Apex Court in **Pranay Sethi** case law.

6. In view of the above, this Court interfere only to an extent of fixation of future prosperous. While awarding compensation, the Tribunal had awarded the disability compensation by a formula as follows:

$$\text{Rs.4,000} \times 12 \times 17 \times 70\% = \text{Rs.5,71,200/-}.$$

7. Since this Court is inclined to increase the award amount in respect of the future prosperous as 50%, which would come around Rs.6,000/- (Rs.4000 + 50%) the loss of disability is hereby calculated as follows:

$$\text{Rs.6000} \times 12 \times 17 \times 70\% = \text{Rs.8,56,800/-}$$



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8. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of income due to disability	5,71,200	8,56,800
2	Loss of Marital status	1,00,000	1,00,000
3	For Pain and Sufferings	1,00,000	1,00,000
4	For loss of earning during the period of treatment and incidental charges	45,000	45,000
5	For transportation	30,000	30,000
6	Medical Expenses	3,83,642	3,83,642
7	Attender Charges	45,000	45,000
8	Extra Nourishment Food	20,000	20,000
9	For Transfiguration	10,000	10,000
10	Loss of Social Status	50,000	50,000
11	Future Medical Expenses	50,000	50,000
	Total	14,04,842	16,90,442

9. The award stands increased from Rs.14,04,842/- to Rs.16,90,442/-. Out of the said Rs.16,90,442/-, 90% of the award amount would come around



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Rs.15,21,397/- and the same is rounded off to a sum of Rs.15,21,400/-, since 10% of the liabilities has been deducted by the Tribunal for non-production of driving license. Accordingly, the award amount stands enhanced from a sum of Rs.14,04,842/- to 15,21,400/-. In all other aspects, the award of the Tribunal stands confirmed.

10. The learned counsel would submit that in the present matter, pay recovery was ordered by the Tribunal.

11. As far as the above submission is concerned, this Court had only interfered only with regard to the awarding of compensation for disability and hence, with regard to the all other aspects, the award passed by the Tribunal stands confirmed.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the third respondent/insurance company is directed to deposit a sum of Rs.15,21,400/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this



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judgment, to the credit of MCOP.No.228 of 2012 on the file of the Additional District and Sessions Judge, Fast Track Court II, Ranipet. The Tribunal is directed to transfer the entire amount to the claimant by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is later. No costs.

04.07.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

nsa

To:

The Additional District and Sessions Judge,
Fast Track Court II, Ranipet.



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KRISHNAN RAMASAMY,J.

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