IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMA No. 820 of 2020

Sundar @ Sundaresan ... Appellant/Petitioner

Vs

1. Murugan

2. The United India Insurance Co., Limited.,
No.15, 1st Floor, Salem Main Road,
Opp: Women Police Quarters
Ulundurpet, Villupuram District – 606 107.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree in M.C.O.P.No. 103 of 2016 dated 22.11.2019 on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

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For Appellant : Mr.T.S.Arthanareeswaran

For 1st Respondent: No appearance

For 2nd Respondent: Mr.D.Bhaskaran

J U D G M E N T

The claimant before the Tribunal in M.C.O.P.No. 103 of 2016 has filed the present Civil Miscellaneous Appeal, aggrieved by the award passed by the Tribunal dated 22.11.2019, to the tune of Rs.2,24,161/- as against compensation of Rs.15,00,000/- claimed by him in MCOP proceedings.

Brief facts that are necessary to adjudicate in the Civil Miscellaneous Appeal are as hereunder:-

2. The claimant met with an accident on 06.12.2015 at about 8.45 p.m., at Chennai – Trichy Main road near Sengkurichi, Villupuram District.

3. The case of the claimant in the claim petition was that he was walking along the road when the vehicle bearing Registration No. TN15 6665 (Honda-Motor Cycle) came from behind and dashed against him, causing multiple injuries. The further statement of the claimant is that he was admitted in Government Hospital, Ulundurpettai and thereafter, at Jipmer Hospital at Pondicherry and again at LKM Hospital, Erode.

4. It is his case that he was employed as a Sales Executive Officer marketing constructed buildings and that he was earning a sum of Rs.25,000/- per month. Making claims under various heads, a total compensation of Rs.15,00,000/- was sought against the respondents.

5. The first respondent / driver of the vehicle did not chose to appear and contest the proceedings before the Tribunal. However, the Insurance Company, namely, the second respondent filed a counter denying all the averments in the claim petition and put the claimant to strict proof of the various amounts claimed under different heads.

6. The second respondent also stated that the accident occurred only because of the claimant, who suddenly crossed the road at 8.45 p.m., when it was totally dark. In other words, the insurer alleged that the claimant had contributed to the accident and consequently he was liable for contributory negligence.

7. Before the Tribunal, the claimant was examined as PW-1 and one Mr.S.Murugesan was examined as PW-2 and Exs. P-1 to P-10 were marked. On the side of the respondents, one G.Saroja was examined as RW-1 and Exs. R-1 to R-3 were marked.

8. On considering the oral and documentary evidence available on record, the Tribunal has awarded a sum of Rs.2,24,161/- to be the total compensation payable together with interest at 7.5% p.a. The Tribunal also found that the contention of the second respondent/Insurance Company that the first respondent did not possess the valid driving license was to be accepted in the absence of any contra evidence and finally held that the insurance company was alone liable to pay the award amount and entitled to recover the same from the first respondent.

9. Heard Mr. T.S.Arthanareeswaran, learned counsel for the appellant and Mr.D.Baskaran, learned counsel for the second respondent.

10. This Court has perused the available materials placed before the Tribunal and now before this Court.

11. Considering the rival submissions advanced on either side and taking into consideration the fact that despite the liability being fastened on the first respondent and the first respondent having not chosen to appear before this Court, this Court proceeds to modify the award in the manner following:-

(i) In so far as the disability, the Tribunal has taken 10% as suggested by the Medical Board, Namakkal. However, only a sum of Rs.3,000/- has been taken as the basis per percentage to arrive at the compensation amount towards disability. Considering the fact that the accident occurred in the year 2015, this Court is of the view that Rs.5,000/- should be taken as per percentage to arrive at a disability compensation amount. Accordingly, a sum of Rs.30,000/- awarded by the Tribunal is enhanced to Rs.50,000/-;

(ii) In so far as the pain and suffering, the Tribunal has awarded only a sum of Rs.15,000/-. This Court considering the fact that the claimant was admitted to hospital for about two weeks grants a sum of Rs.25,000/- towards pain and suffering;

(iii) The Tribunal had granted a sum of Rs.10,000/- towards extra nourishment and loss of property and this Court grants a sum of Rs.20,000/-;

(iv) In so far as the loss of income, the Tribunal has taken a sum of Rs.7,000/- per month and arrived at the compensation amount of Rs.21,000/- (7,000/- x 3 months). The claimant has stated that he is a Sales Executive and was earning a sum of Rs.25,000/- per month. However, as per the salary certificate, a sum of Rs.15,000/- was stated as the monthly income of the claimant. The Tribunal has awarded Rs.7,000/- alone since there was no person from the company / employer was examined before the Tribunal.

12. This Court, considering the fact that the claimant has prima facie established to be employed with a construction company as a Sales Executive, his income should be not less than Rs.10,000/- per month. Accordingly, the Tribunal's finding with regard to the loss of income of the claimant of Rs.7,000/- stands enhanced and modified to Rs.10,000/- per month and for 3 months, the amount awarded is Rs.30,000/- as against Rs.21,000/- awarded by the Tribunal.

13. In fine, the award of the Tribunal is enhanced and modified as hereunder:-

(i) Disability	=	Rs. 50,000/-
(ii) pain and suffering	=	Rs. 25,000/-
(iii) Extra nourishment	=	Rs. 20,000/-
(iv) Loss of income	=	Rs. 30,000/-
(iv) attender charges	=	Rs. 15,000/-
(v) medical bill	=	Rs.1,18,161/-
(v) transport to hospital	=	Rs. 16,839/-
Total		**Rs. 2,75,000/-**

14. The total compensation now worked out is Rs.2,75,000/-.

15. In fine, the Appeal is partly allowed. No costs. The award is modified and the compensation award is enhanced to **Rs.2,75,000**/-.

16. This Court also makes it clear that since the Tribunal has found that the first respondent is liable to compensate the appellant/claimant herein and only pay and recovery for the award amount of Rs.2,24,161/-, the enhanced award amount also shall be paid by the second respondent and recovered from the first respondent.

17. The learned counsel for the appellant brings to the notice of this Court that there has been no payment/deposit made by the second respondent/insurance company till date.

18. The second respondent is directed to deposit the award amount and also the enhanced amount, with interest at the rate of 7.5% per annum from the date of filing of the petition till date of deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same following due procedure being adopted before the Tribunal. The Civil Miscellaneous Appeal is partly allowed. No order as to costs.

09.03.2023

Index:Yes / No
Speaking / Non-Speaking order
vsg

To

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   Tiruchengode.

2. The United India Insurance Co., Limited.,
   No.15, 1st Floor, Salem Main Road,
   Opp: Women Police Quarters
   Ulundurpet, Villupuram District – 606 107.

3. The Section Officer,
   VR Section,
   Madras High Court, Chennai.

<u>P.B.BALAJI, J.</u>

vsg

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