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CMA.No.523 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE N.MALA

Civil Miscellaneous Appeal No.523 of 2023

Nagappan

... Appellant/Claimant

-Vs-

1. N.Vijay

2. National Insurance Company Ltd.,
Motor third Party Hub, Regina Mansion,
No.46, Moore Street, 3rd Floor,
Chennai – 600 001.

... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.4776 of 2016 dated 27.02.2020 on the file Motor Accident Claims Tribunal, (Small Causes Court, Special Sub Court No.2) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1- No appearance

: Mrs.R.Sreevidhya [R2]



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal is filed against the judgment and decree dated 27.02.2023 made in MCOP No.4776 of 2016 on the file of the Motor Vehicle Accident Claims Tribunal, Small Causes Court, Special Sub Court No.2, Chennai.

2. The claimant has filed this appeal seeking enhancement of compensation.

3. The claimant filed the claim petition claiming Rs.10,00,000 as compensation for the injuries suffered by him in the accident, which occurred on 13.06.2016. According to the claimant he sustained fracture in the right leg and right hand. The claimant was working as a Mason and his monthly income was Rs.700/- per day. The Claims Tribunal in the absence of evidence regarding the income of the claimant assessed the income at Rs.8000/- per month and added 25% towards future prospects. Taking into consideration, the disability assessed by the Medical Board at 37%, the claims Tribunal awarded a sum of Rs.5,77,200/- as compensation under the head of loss of income.



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4. Not satisfied with the award of the Tribunal under the head of loss of income, the claimant has filed the above Civil Miscellaneous Appeal.

5. It is seen that the accident took place on 13.06.2016 and the claimant sustained fracture of the right leg and right forearm. In my view the Tribunal has rightly adopted the multiplier method as it is seen that the claimant was a Mason and had sustained fracture of the right leg and right forearm.

6. The learned counsel for the claimant/appellant submits that the income of the appellant was assessed at Rs.8,000/- as against the claim of Rs.15,000/-. The counsel submitted that the income assessed is very much on the lower side.

7. It is seen that the claimant was aged 45 years at the time of the accident and was working as a Mason. The claimant has claimed Rs.700/- per day. In my view, as the accident occurred in 2016, Rs.480/- per day for 25 days of a month can be taken as the income, The income is therefore fixed at Rs.12,000/- per month. It is also seen that though the



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Medical Board has fixed the disability at 47%, the functional disability was assessed at 37% by the Tribunal. I am of the opinion that in the absence of any compelling reasons, the functional disability fixed at 37% need not interfered. If the income of the claimant is taken at Rs.12,000/-, then the compensation under the head of loss of income works out to Rs.8,65,800/- $[(12,000 + 25\%) * 12 * 13 * 37\%]$

8. The learned counsel for the claimant submits that the amount awarded towards other heads are fair and reasonable, therefore, the same are not questioned in this appeal.

9. In the light of the above discussion, this Civil Miscellaneous Appeal is partly allowed. The claimant shall be entitled to enhance compensation of Rs.10,11,700/- along with 7.5% interest from the date of petition till the date of deposit. The counsel for the Insurance Company submits that the amount awarded by the Tribunal was already deposited by it. The Insurance Company is therefore directed to deposit the enhance compensation of Rs.2,88,600/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order.



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10. On such deposit is being made, the claimant/appellant shall be entitled to withdraw the amount by making proper application.

Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No costs.

10.04.2023

mp

To
The Motor Vehicle Accident Claims Tribunal/
Small Causes Court,
Special Sub Court No.2, Chennai.



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N.MALA, J.

mp

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