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C.M.A.No.4211 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.4211 of 2019

Sivakumar

... Appellant

Vs.

1.Vijay Vidhyalaya Matriculation Hr. Sec. School,
Dharmapuri.

2.The New India Assurance Co., Ltd.,
Dharmapuri.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 06.04.2016 made in MCOP.No.1007 of 2014, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Dharmapuri.

For Appellant : Mr.D.Ramesh Kumar

For Respondents : R.Sivakumar for R2
: Name Printed for R1



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JUDGMENT

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation awarded in MCOP.No.1007 of 2014, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Dharmapuri.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The case of the claimant is that on 11.02.2013 at about 04.30 P.M., the claimant was riding a motorcycle bearing Reg.No.TN 24 P 0941 along with one Mariyappan from Dharmapuri to Papparapatti main road at that time first respondent school bus bearing Reg.No.TN 29 A 5355 came in the opposite direction in a rash and negligent manner and hit against the deceased Mariappan and one Sivakumar who was rider of the said motorcycle. As a result of the accident, the claimant sustained injuries all over the body. Claimant has filed a claim petition claiming compensation for a sum of Rs.50,00,000/- for the injuries sustained by him under Section 166 of Motor Vehicles Act.



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4. The first respondent owner of the school bus has not contested the claim petition and remained exparte before the Tribunal.

5. The second respondent insurance company of the bus has contested the claim and pleaded that the claimant has driven the motorcycle with high speed and in zig-zag manner and dashed against the bus. It is also alleged that driver of first respondent had no valid driving license at the time of accident and bus had no valid F.C, thereby there is a violation of policy condition.

6. Based on the evidence placed on record, Tribunal in Point No.1 has considered the negligent aspect and held that negligent driving of the first respondent is responsible for the accident. In point No.2, the Tribunal has held that at the time of accident, the driver of the first respondent has valid driving license and the vehicle was insured with the second respondent insurance company. In Point No.3, the Tribunal has quantified the compensation and awarded Rs.12,26,000/- along with interest at the rate of



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7.5% per annum. Aggrieved over the quantum of compensation, the claimant has preferred this Civil Miscellaneous Appeal.

7. Learned counsel for the claimant would submit that the notional income fixed for assessing the loss of earning capacity is not proper and the Tribunal has not awarded future prospectus and the compensation awarded under other heads are also on lower side, hence prays to enhance the same.

8. Learned counsel for the insurance company has vehemently opposed that the Tribunal based on the evidence placed on record has rightly fixed the quantum of compensation which is also on higher sides, hence prays to dismiss this appeal.

9. I have considered the submissions made by both sides and perused the records.

10. Tribunal has granted compensation under the head loss of earning capacity by adopting multiplier method, since the claimant has sustained injuries in left leg which resulted in amputation of leg above knee.



Similarly, claimant has also sustained fractures on the right hand and same has been fixed by using plate and screws. He has also undergone SSG in the right leg. Based on the above assessment, the Tribunal has accepted disability as 80%. The Tribunal has rejected the contention of the claimant that he was earning a sum of Rs.35,000/- per month by doing Mechanic work as well as involved in buying and selling of two wheelers. Based on the norms followed during the year 2010, the Tribunal has fixed Rs.12,000/- as notional income and adopted multiplier method and on considering the age of the injured, Tribunal has awarded Rs.7,68,000/- and this Court finds no infirmity and the same could not be revised since the Tribunal awarded the above said amount based on the evidence and by giving proper reason. However, the Tribunal has not awarded future prospectus. As the judgment of Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation***, reported in AIR 2020 SC 4284, the claimant is entitled for future prospectus 40% and accordingly the same is granted. Loss of Earning capacity summed as Rs.10,75,200/- = $(7000 \times \{5000 \times 40/100 = 2000 + 5000\} \times 12 \times 16 \times 80/100)$. The compensation awarded under the other heads are just, fair and reasonable and does not call for any interference of this Court and accordingly the same is confirmed.



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WEB COPY 11. In the light of the above discussion, the award of the Claims

Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	80% Permanent Disability and Loss of Income	7,68,000/-	10,75,200/-	Enhanced
2	Pain and Suffering	50,000/-	50,000/-	Confirmed
3	Loss of Income for two months	10,000/-	10,000/-	Confirmed
4	Medical Expenses	3,08,000/-	3,08,000/-	Confirmed
5	Transportation Charges	20,000/-	20,000/-	Confirmed
6	Nutrition and loss of Estate	20,000/-	20,000/-	Confirmed
7	Metal Agony	50,000/-	50,000/-	Confirmed
	Total	Rs.12,26,000/-	Rs.15,33,200/-	Enhanced by Rs.3,07,200/-

12. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal to Rs.15,33,200/- from Rs.12,26,000/-.



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(ii) The second respondent directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the claimant is entitled to withdraw the same by making appropriate application.

(iii) There shall be no order as to costs.

04.09.2023

jai

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
Special Subordinate Court,
Dharmapuri.
2. The Section Officer,



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V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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