



C.M.A.No.1397 of 2019

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K.RAJASEKAR,J.,

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 02.11.2012, in M.C.O.P.No.1795 of 2010, passed by the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Salem.

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

3. The case of the claimant is that on 31.07.2010 at about 08.00 p.m., he was travelling along with one Seenivasan in a two-wheeler bearing registration No.TN 27 E 8367, near Kondalampatti roundana bus stand, at that time, a lorry bearing registration No.TN 22 W 6462 came in an opposite direction, hit against the two-wheeler, resulting severe injuries to the both persons and a criminal case was registered against the lorry driver in Crime No.458/2010 under Sections 279, 338 and 304(a) IPC and claimed compensation for a sum of Rs.20,00,000/-. In the very same accident, the



rider of the two-wheeler viz., Seenivasan died and his parents have filed M.C.O.P.No.1788 of 2010.

4. Before the Tribunal, on the side of the petitioner, one Santhi was examined as P.W.1 and the petitioner examined himself as P.W.2 and two Doctors who has given treatment were examined as P.W.3 and P.W.4 and marked documents as Exs.P1 to P6. On the side of the respondents, no witness was examined. The Tribunal has taken up enquiry of both M.C.O.Ps together and common evidence is recorded on the side of both claimants PW.1 to P.W.4 was examined and Exs.P1 to P6 were marked. P.W.2 to P.W.4 have given evidence on behalf of the claimant in this case (M.C.O.P.No.1795/2010). Exs.P10 to OP18 are the medical records including the Disability Certificate of the claimant herein.

5. The rider of the two-wheeler namely, Seenivasan died in the accident, his legal heirs have separately filed M.C.O.P.No.1788 of 2010. Both petitions were taken up together for enquiry and a common award was passed on 02.11.2012. The claimant in M.C.O.P.No.1795 of 2010 is concerned, the



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Tribunal has awarded a sum of Rs.1,93,583/- in the following heads:

For Loss of income a sum of Rs.1,00,000/-; For pain and sufferings a sum of Rs.75,000/-; For medical bills a sum of Rs.12,583/- ; For Extra Nourishment a sum of Rs.3,000/- and For Transportation a sum of Rs.3,000/-.

6. Aggrieved over the compensation awarded by the Tribunal, the claimant has filed this appeal for enhancement.

7. The learned counsel for the appellant would submit that during the enquiry of M.C.O.P.No.1795/2010, injuries sustained by the claimant was not cured and he was under continuous treatment and subsequently, after filing of the appeal, as per the advice of the Medical Officers, his left leg has been amputated and there is no ample evidence available to show that the injured was subjected to amputation for the injuries sustained in this accident.

8. It is contended that the Tribunal has granted a sum of Rs.1,00,000/- as loss of income, since the petitioner lost his leg a multiplier method has to be adopted and prays to permit the petitioner to adduce



additional evidence with regard to the subsequent development such as amputation.

9. The learned counsel for the second respondent/Insurance Company submitted that after considering the evidence of the Doctor, the Tribunal has awarded a sum of Rs.1,00,000/- for loss of income and there is no infirmity in the above finding. Now the contention is that the claim of the claimant is not sustainable since after three years, it is alleged that the claimant's left leg is amputated, the appellant/claimant has to prove that the injuries sustained by him in this accident by adducing proper evidence.

10. I have considered the submissions made by both sides and perused the materials placed on record.

11. Admittedly, the claimant was assessed for his disability by the Doctors-P.W.3 and P.W.4 and issued Disability Certificates Ex.P15 and Ex.P18 respectively, wherein, the disability has been assessed as 44% and 50% . The Tribunal has considered the disability as partial disability which is not affecting the earning capacity of the claimant and awarded Rs.2,000/- per percentage of the injury and awarded a sum of Rs.1,00,000/- under the head



loss of income.

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12. Now, it is contended that the claimant was under continuous treatment and subsequently, injury sustained by him on his leg has not healed and it resulted in amputation of his left leg. In Ex.P15-Disability Certificate, it is recorded that the injured has sustained fracture on his left leg as well as Pelvic bone. In Ex.P18, severe injuries have also noted in the abdomen, various internal injuries resulted in surgeries, including plastic surgeries on his abdomen area. The above Disability Certificates and medical records supports the contention of the claimant/appellant that the severe injuries sustained by the claimant have not been healed and there was no possibility of healing within the short span of time, now he has lost his left leg, which requires further enquiry. Admittedly, the evidence relating to further treatment, and the amputation requires recording of oral and documentary evidence and to be subjected into cross examination for arriving just decision of the case. Since the Claim Petition has been filed by invoking beneficial legislation i.e., the payment of compensation under the Motor Vehicles Act, I am of the view that an opportunity is to be given to the claimant/appellant to address his grievance



and to get “Just Compensation” as contemplated under Section 166 of the Motor Vehicles Act. The Insurance Company has not filed any appeal against the finding of fact regarding the negligent act on the part of the driver of the first respondent vehicle and liability to indemnify the respondent No.1 by the respondent No.2/Insurance Company. Hence only to decide the quantum to be awarded to the claimant, further enquiry is required and this matter is remitted to the Tribunal to re-consider the quantum of compensation to be awarded to the claimant.

13. Accordingly, the matter is remitted back to the Tribunal and the Tribunal is directed to record further evidence relating to quantum of compensation to be awarded in view of the claimant's left leg has been amputated due to the injuries sustained by him in the accident. The Tribunal has also directed to consider the issue relating to the fact whether the claimant was in continuous treatment for the injuries sustained by him, which resulted in loss of limb i.e., amputation of left leg and whether the respondents are liable to pay compensation for the same. If the Tribunal has arrived its conclusion, the quantum of compensation fixed earlier is to be modified, the



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Tribunal is at liberty to do the same and send the above finding to this Court for consideration of this appeal. Accordingly for the above limited purpose, the matter is remanded back to the Tribunal. Since the Claim Petition is of the year 2019, the Tribunal is directed to dispose of the matter and send its finding at the earliest.

28.06.2023

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To

- 1.The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Salem.
- 2.The Section Officer,
VR Section, High Court, Madras.

K.RAJASEKAR,J.,

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