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C.M.A(MD)No.468 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2022

Pronounced on : 31.01.2023

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THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.468 of 2020

Selvakumar

... Appellant / Petitioner

Vs.

1.Dhanalakshmi

2.The Branch Manager,
Branch Office - II,
No.129/77, Kottaikulam veethi,
Allinagaram,
Theni - 625 531.

... Respondents /Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.133 of 2017 on the file of the Motor Accident Claims Tribunal,(Special Sub Judge), Dindigul, dated 29.06.2018.

For Appellants : Mr.A.Saravanan

For R1 : No Appearance

For R2 : Mr.R.Rajesh Saravanan



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JUDGMENT

This appeal is filed against the judgment and decree passed in M.C.O.P.No.133 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge), Dindigul. The appellant is the claimant. Respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 09.12.2016, at about 6.30 p.m., when the petitioner was riding a two wheeler bearing registration number TN 60 J 5889, along the Theni-Periyakulam road, near Allinagaram, Co-operative Ration shop, a Tata Ace vehicle bearing registration number TN 60 L 1442 came from behind the petitioner in a rash and negligent manner, dashed against the two wheeler. The petitioner sustained injury. He was taken to Theni Government Hospital and after getting first aid, he was taken to Government Rajaji Hospital, Madurai and he took treatment as inpatient from 10.12.2016. His right leg was amputated above the knee level. The petitioner was aged about 24 years. He was working as a driver and he worked as a part time employee in a bakery and was earning Rs.20,000/- per month. Due to the disability, the



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petitioner sustained disability and he is suffering loss of income. He claimed a sum of Rs.25,00,000/- as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:

The real manner of accident was suppressed in the petition. The first respondent driver was not rash or negligent. He was not responsible for the accident. The owner and the insurance company of the two wheeler are necessary parties. The injuries, disability, medical expenses, period of treatment, age of the petitioner, avocation and income are all denied. The claim is excessive.

4.Two witnesses were examined and five documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The tribunal fixed the compensation as Rs.15,71,500/-.

5.Against the award, the claimant filed this appeal for enhancement of compensation on the following grounds:



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The Tribunal ought to have awarded more compensation, considering the amputation of the right leg, above the knee level. The Tribunal is wrong in fixing the monthly income and the same has to be enhanced. The Tribunal failed to award any amount towards transportation charges and medical expenses. The total compensation is to be enhanced.

6.On the side of the appellant it is stated that the medical board has fixed the disability at 82% and that the Tribunal fixed monthly income as Rs. 6,000/- which is very low. Future prospects were not included. No compensation was awarded towards transport expenses loss of amenities and loss of marriage prospects.

7.On the side of the respondent it is stated that the Tribunal has added 40% towards future prospects. Even without any proof of income, the Tribunal has fixed the monthly income at Rs.6000/- per month. There is no ground to enhance the compensation.

8.There is no dispute regarding the liability. The respondent has not chosen to file an appeal or cross objection. Hence it is decided that the



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respondents are liable to pay compensation. The disability certificate was marked as Ex.P4. The case sheet were marked as Ex.P5. Considering Ex.P4 and Ex.P5, the Tribunal has fixed the disability at 80% which is reasonable. No document was filed to prove that the petitioner has worked as a driver and that he was earning Rs.15,000/-. No document was filed to prove that the petitioner was working in a bakery shop and was earning Rs.5,000/- per month.

9.Considering the date of accident, it is decided that the petitioner might have received a sum of Rs.7,000/- towards monthly income. For 80% disability, the loss of income is calculated as Rs.5,600/-. After adding 40% towards future prospects, the income is calculated as Rs.7,840/-[5600 + 2240(40% of 5600)]. The age of the petitioner at the time of accident is 23 years. Therefore, multiplier 18 is applicable. After applying multiplier 18, the loss of income is calculated as Rs.16,93,440/- (7840 x 18 x 12).

10.The claimant is entitled to Rs.1,00,000/- towards pain and sufferings. Rs.20,000/- towards extra nourishment, Rs.10,000/- towards transport expenses, Rs.21,560/- towards attendant charges.



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11.Hence, the compensation is calculated as follows:

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Loss of Income	-	Rs. 16,93,440/-
Pain and sufferings	-	Rs. 1,00,000/-
Extra nourishment	-	Rs. 20,000/-
Transport Expenses	-	Rs. 10,000/-
Attendant charges	-	Rs. 21,560/-

Total	-	Rs. 18,45,000/-

12. The Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.15,71,500/- to Rs.18,45,500/- (Rupees Eighteen Lakhs Forty Five Thousand only) which shall carry an interest of 7.5% per annum.

(ii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if not already paid, within a period of three weeks from the date of this order.

(iii) The second respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.18,45,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of in M.C.O.P.No.133 of 2017 on the file of the Motor Accident Claims



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Tribunal,(Special Sub Judge), Dindigul, within a period of eight weeks from the date of receipt of a copy of this order. The appellants are not entitled for interest for the default period, if there is any.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the entire award amount of Rs.18,45,000/- (Rupees Eighteen Lakhs Forty Five Thousand only) after following the due process of law, less any amount already received by them.

31.01.2023

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,(Special Sub Judge), Dindigul.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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Pre - Delivery Judgment made in
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