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C.M.A.No.2283 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2283 of 2022

Dharanikumar

.. Appellant

Vs.

1.P.Yuvaraj

(Notice to 1st respondent dispensed with
as he was set exparte before the Tribunal)

2.United India Insurance Company Limited,
No.134, Greams Road, IV Floor, Anna Salai,
Chennai – 600 006.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance and to set aside the award dated 29.03.2022 made in M.A.C.T.O.P.No.1515 of 2017 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For R2 : Ms.A.Charumathy



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JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement against the award of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.A.C.T.O.P.No.1515 of 2017, dated 29.03.2022.

2.The claimant was riding a two wheeler and was proceeding from North to South direction at OMR Salai on 11.02.2017 and at about 03.40 PM., when his vehicle was near the Jain College Bus Stop, the two wheeler that was driven by the 1st respondent herein, was driven in a rash and negligent manner and it dashed on the vehicle belonging to the claimant. As a result, the claimant was thrown out of the vehicle and he sustained grievous injuries. The claimant underwent surgery and diagnosed right foot injury with 4th toe amputation dip level.

3.It is under these circumstances, the claimant has filed the petition seeking for payment of compensation.



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4.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent. After having rendered such a finding, the Tribunal proceeded to fix the compensation and the total was compensation fixed at Rs.1,55,385/- (rounded off to Rs.1,55,400/-) in the following terms:-

1.Loss of earnings	-	Rs.96,768.00
2.Attender charges	-	Rs.1,050.00
3.Towards Pain and Sufferings	-	Rs.20,000.00
4.Loss of amenities	-	Rs.20,000.00
5.Towards Extra Nourishment and Transport	-	Rs.10,000.00
6.Medical Expenses	-	Rs.6,567.00
7.Damages to clothes	-	Rs.1,000.00

		Rs.1,55,385.00

Rounded off : Rs.1,55,400/-

5.The above compensation was directed to be paid by the Insurance Company with 7.5% interest per annum.



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6.The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement of compensation.

7.Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court has also carefully gone through the award passed by the Tribunal.

10.The main ground that was urged on the side of the appellant is that the appellant was working as a Business Process Leader in TCS at Siruseri, Chennai and he was earning a gross salary of Rs.62,252/- per month. To substantiate the same, Ex.P5, which is the salary slip was also marked. However, the Tribunal disregarded the same and fixed the notional income of Rs.12,000/- per month and added 40% towards future prospects towards this notional income.



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11.I carefully went through the evidence of P.W.1. The claimant has specifically stated that at the time of accident he was aged about 33 years and he was working as Business Process Leader in TCS Company. He further stated that he was earning a sum of Rs.62,252/- per month as his gross salary. To substantiate the same, the salary slip was marked as Ex.P5. This salary pertains to the month of February, 2017. Even in the cross examination, this stand taken by the claimant has not been discredited. Questions have only been put to the claimant as to whether he claimed for any reimbursement towards medical expenses and other questions related thereto.

12.The Hon'ble Supreme Court had an occasion to deal with the issue as to whether the employer must be examined in order to prove the salary slip. It was held that the document itself is a conclusive proof and there is no need to examine the employer. This judgment is reported in **CDJ 2022 SC 1343, Rajwati @ Rajjo & Others Vs. United India Insurance Company Ltd., & Others.**

13.In the considered view of this Court, the Tribunal has completely disregarded the evidence of P.W.5 and also Ex.P5 and went



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wrong in fixing the notional monthly income at Rs.12,000/-. This requires interference of this Court. The gross salary shown in the pay slip is Rs.62,252/- per month. In view of the same, considering the statutory deductions, this Court is inclined to fix the monthly salary at Rs.50,000/-. 40% is added towards future prospects and it works out to Rs.20,000/- and the total monthly income amount is Rs.70,000/-. The loss of earning is calculated thus; Rs.50,000/- + 40% X 12 X 16 X 3%, which totals to Rs.4,03,200/-.

14.The compensation that has been fixed under the other heads is reasonable and it does not require interference of this Court.

15.In the light of the above discussion, the compensation granted by the Tribunal is modified as follows:

1.Loss of earnings	-	Rs.4,03,200.00
2.Attender charges	-	Rs.1,050.00
3.Towards Pain and Sufferings	-	Rs.20,000.00
4.Loss of amenities	-	Rs.20,000.00
5.Towards Extra Nourishment and Transport	-	Rs.10,000.00
6.Medical Expenses	-	Rs.6,567.00
7.Damages to clothes	-	Rs.1,000.00

		Rs.4,61,817.00



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16.The compensation awarded by the Tribunal at Rs.1,55,385.00 (rounded off to Rs.1,55,400/-) is hereby enhanced to Rs.4,61,817/-. The 2nd respondent-Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

17.In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

15.04.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

N.ANAND VENKATESH, J.



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To

1.The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

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

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