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C.M.A.No.1791 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1791 of 2023

P.Karthikeyan

...Appellant

Vs

1.K.Kumaresan
2.The Manager (Legal Department),
United India Insurance Company Ltd.,
Third Party Claims,
4th Floor, Sillingi Building,
No.134, Greames Road,
Chennai 600 006.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to enhance the amount award in EC.No.46 of 2021 dated 16.02.2023 on the file of the Commissioner for Workmen's Compensation I, (Joint Commissioner of Labour I) Chennai

For Appellant : Mr.J.Ravikumar

For Respondent : Ms.V.Pushpa for R2



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JUDGMENT

This civil miscellaneous appeal has been filed to enhance the amount awarded by the Tribunal in EC.No.46 of 2021 dated 16.02.2023

2. The learned counsel for the claimant would submit that on 06.05.2020 as per the instructions of the 1st respondent, the claimant had travelled from Chennai to Hyderabad to drop his passengers. Further, while returning to Chennai on 07.05.2020, a buffalo had suddenly crossed the road and to avoid accident the claimant had turned the car to the left side and dashed against a wall, due to which he had sustained severe injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

$\text{Rs.15,000/- (monthly income)} * 60/100 \text{ (disability)} * 48.3/100 \text{ (loss of earning)} * 166.29 \text{ (multiplier)} = \text{Rs.7,22,863/-}$

3. He would also submit that due to the aforesaid accident, the claimant had sustained severe head injuries and thereby, he had lost his right side eye vision. For the said injuries, the disability was assessed at 48.3% by Medical



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Board. However, though the notional income was fixed as a sum of Rs.15,000/- per month as per the Workmen Compensation Act, the Tribunal had failed to take disability as 100% while awarding compensation. Hence, he requested this Court to enhance the same.

4. In reply, the learned counsel appearing for the respondent would submit that the Tribunal had rightly taken the disability of the claimant and hence, the compensation awarded by the Tribunal is just and reasonable. Therefore, he would request this Court to confirm the same. Further he would submit that if this Court is inclined to enhance the compensation, any percentage, which is less than 100% may be taken as disability.

5. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

6. In the present case, the disability was fixed by the Doctor at 48.3%. Today the claimant appeared before this Court and on his appearance before this Court, it is clear that he had lost his right side eye sight and due to severe



head injury, there is a disfigurement in his head.

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7. On perusal of the law laid down by the Hon'ble Apex Court in ***Rajkumar vs. Ajaykumar and another*** reported in ***2010 SCC OnLine SC 1166***, it appears that for the loss of eye sight of the injured, 100% disability has been taken for awarding compensation. In the present case also, the claimant, being a driver, cannot carry on his avocation without the right eye sight. When such being the case, the disability taken by the Tribunal appears to be low and hence, this Court is inclined to take 80% as functional disability. Further, since there is no dispute with regard to the other aspects such as factor of income, multiplier, etc., the said factors, which were arrived by the Tribunal, stands confirmed. Accordingly, the loss of income would be calculated as follows:

$$\text{Rs.15,000/- (monthly income) * 60/100 (disability) * 80/100 (loss of earning) * 166.29 (multiplier) = Rs.11,97,228/-}$$

12. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.11,97,228/-. Accordingly, the award amount stands increased from a sum of Rs. 7,22,863/- to Rs.11,97,228/-. In all other aspects, the award of the Tribunal stands confirmed.



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.11,97,228/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of EC.No.46 of 2021 on the file of the Commissioner for Workmen's Compensation I, (Joint Commissioner of Labour I) Chennai. Upon such deposit, the claimant is permitted to withdraw the award amount, along with interest, by following the procedure therein. No costs.

05.03.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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KRISHNAN RAMASAMY,J.

nsa

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