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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
C.M.A. (MD) No. 426 of 2016
and
C.M.P (MD) No. 7637 of 2016

P. Elangovan

... Appellant/Claimant

Vs.

1. S. Murali

2. The Oriental Insurance Company Limited,
represented by its
Branch Manager,
South Main Street,
Thanjavur.

3. K. Gandhi

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2016 made in M.C.O.P.No.300 of 2011, by the Motor Accident Claims Tribunal - cum - Special Subordinate Court, Thanjavur.

For Appellant : Mr. G. Karnan

For Respondents : Mr. C. Jawahar Ravindran
for R.2

R.1 & R.3 - Notice Dispensed with.

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant who sustained a fracture in the right thigh bone and other injuries, in the accident occurred on 13.01.2008 when he was riding his two wheeler from Thanjavur to Kumbakonam and he was hit by an Ambassador car coming in the opposite direction. Therefore, the claim petition.

2. On contest, the Tribunal found that the driver of the car was rash and negligent and fixed the liability on him and awarded a sum of Rs.1,42,197/- (Rupees One Lakh Forty Two Thousand One Hundred and Ninety Seven only), after deducting a sum of Rs.35,549/- (Rupees Thirty Five Thousand Five Hundred and Forty Nine only) being 20% of the amount towards contributory negligence fixed on the appellant/claimant. Not satisfied with the quantum of compensation, the appellant/claimant is before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Heard Mr. G. Karnan, learned Counsel for the appellant/claimant and Mr. C. Jawahar Ravindran, learned Counsel who takes notice for the second respondent.

4. Insofar as the respondents 1 and 3 are concerned, they were



set *ex parte* before the Tribunal and hence, notice to them has been dispensed with, as per the judgment of the Full Bench of the Madhya Pradesh High Court in ***Mrs. Jamunabai v. Chhote Singh*** reported in ***I (2004) ACC 190 (FB)***.

5. There is no appeal filed by the second respondent-Insurance Company and therefore, the only question is with regard to the quantum of compensation.

6. It is seen that as per the evidence of P.W.2 - Doctor, the appellant/claimant suffered a fracture in the right thigh bone and he has been operated and a steel plate and screw have been inserted by way of a surgery, resulting in restriction of movement. Further, he sustained injuries in the right hand and left side jaw.

7. P.W.2 - Doctor determined the disability at 35%. However, the Tribunal without any contra evidence reduced the same to 30% and awarded a sum of Rs.90,000/- (Rupees Ninety Thousand only) towards disability. The said reduction is unwarranted in the absence of any contra evidence of experts and hence, this Court re-determines the disability at 35% and awards a sum of **Rs.1,05,000/-** (Rupees One Lakh and Five Thousand only) towards disability.

8. P.W.3 - Clerk from Anbu Hospital, Kumbakonam was examined and Ex.P.10 - series of medical receipts have been marked to the tune of Rs.32,615/- (Rupees Thirty Two Thousand Six Hundred and Fifteen only). However, without any discussion and finding, the Tribunal reduced the same to a sum of Rs.19,546/- (Rupees Nineteen Thousand Five Hundred and Forty Six only) and therefore, as per Ex.P.10 - series of medical receipts marked through P.W.3, a sum of **Rs.32,615/-** (Rupees Thirty Two Thousand Six Hundred and Fifteen only) is awarded towards medical expenses.

9. It has been stated that the appellant/claimant sustained a fracture in the right thigh bone and he has been operated at Anbu Hospital, Kumbakonam, as per Exs.P.1, P.3, P.8 and P.13 and also the evidence of P.W.2 - Doctor. It also proves that the appellant/claimant was operated and a steel plate and a screw were already fixed. For removal of the said steel plate and the screw, future medical expenses have not been given by the Tribunal, even though the Tribunal found that the appellant/claimant was operated and a steel plate and a screw were fixed and in view of the same, this Court awards a sum of **Rs.30,000/-** (Rupees Thirty Thousand only) towards future medical expenses.

10. The amounts awarded under the other heads, viz., a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) towards pain and sufferings; a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) towards extra nourishment; a sum of **Rs.1,200/-** (Rupees One Thousand and Two Hundred only) towards attendant charges and a sum of **Rs.3,000/-** (Rupees Three Thousand only) towards transportation

charges, are all reasonable and they are confirmed.

11. Further, the Tribunal, taking note of the period of treatment from 13.01.2008 to 18.01.2008 (six days) as inpatient, took four months as the period during which he could not attend the work and fixed a sum of Rs.6,000/- (Rupees Six Thousand only) as monthly income and rightly awarded a sum of **Rs.24,000/-** (Rupees Twenty Four Thousand only) towards loss of income and the same is confirmed. Accordingly, the total compensation is arrived at as under:

Sl.No	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	Partial Permanent Disability	90,000.00	(+) 15,000.00	1,05,000.00
2.	Medical Expenses	19,546.00	(+) 13,069.00	32,615.00
3.	Pain and Sufferings	25,000.00	Nil	25,000.00
4.	Extra Nourishment	15,000.00	Nil	15,000.00
5.	Attendant Charges	1,200.00	Nil	1,200.00
6.	Transportation Charges	3,000.00	Nil	3,000.00
7.	Loss of Income during Treatment Period	24,000.00	Nil	24,000.00
8.	Future Medical Expenses	Nil	(+) 30,000.00	30,000.00
Grand Total				2,35,815.00

The rate of interest awarded by the Tribunal at **7.5%** per annum is confirmed.

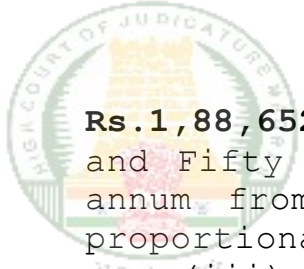
12. Though the Tribunal found that the first respondent was rash and negligent, taking note of the absence of a driving licence possessed by the appellant/claimant, the Tribunal rightly fixed the contributory negligence at 20% on the appellant/claimant and therefore, the Tribunal rightly deducted 20% from the compensation awarded to the appellant/claimant and the same is confirmed.

13. Therefore, out of the award amount of Rs.2,35,815/- (Rupees Two Lakhs Thirty Five Thousand Eight Hundred and Fifteen only), the appellant/claimant is entitled to a sum of **Rs.1,88,652/-** (Rupees One Lakh Eighty Eight Thousand Six Hundred and Fifty Two only), after deducting a sum of Rs.47,163/- (Rupees Forty Seven Thousand One Hundred and Sixty Three only) being 20% of the amount towards contributory negligence fixed on the appellant/claimant.

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed;

(ii) The appellant/claimant is entitled to a sum of



Rs.1,88,652/- (Rupees One Lakh Eighty Eight Thousand Six Hundred and Fifty Two only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) The second respondent-Insurance Company is directed to transfer the award amount to the Personal Savings Bank Account Number of the appellant/claimant through RTGS/NEFT system, less the amount already deposited, if any, after getting the Account Details of the appellant/claimant by the Officials of the second respondent-Insurance Company, within a period of **four** weeks from the date of receipt of a copy of this judgment;

(iv) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
Special Subordinate Court,
Thanjavur.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to MR.G.KARNAN,ADVOCATE, SR NO:877

+1 cc to MR.C.JAWAHAR RAVINDRAN,ADVOCATE, SR NO:1036

rsb

sva/sv/mms/31.01.2017/4p/5c

C.M.A. (MD) No.426 of 2016

and

C.M.P (MD) No.7637 of 2016

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