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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD)No.973 of 2011

Sekar ... Appellant

Vs.

1. Lakshmi

2. M/s.TATA A.I.G. Insurance Company Limited,
   177, Anna Salai,
   Chennai.

3. Seenivasan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 12.04.2006, passed by the Motor Accident Claims Tribunal, Sub Judge, Sankarankoil in M.C.O.P.No.34 of 2004.

For Appellant : Mr.V.Sasikumar
For R1 & R3 : No appearance
For R2 : Mrs.KR.Shivashankari for Mr.Srinivasa Raghavan

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant against the judgment and decree dated 12.04.2006 in M.C.O.P.No.34 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Judge, Sankarankoil.

2. The brief facts of the case is as follows:

It is a case of injury took place on 08.06.2003 at about 2.30 a.m., when the claimant was sitting in Thirumalai Nayakan Pudhukudi Auto Stand, the driver of the TATA SUMO Car bearing Registration No.D.Y.01 S.6657 belonging to the first respondent drove the car in a rash and negligent manner and dashed against the claimant. As a result of which, the claimant sustained grievous injuries all over the body. Immediately, he was admitted in Hospital and a case was registered in Crime No.329 of 2003. At the time of accident, he was earning a sum of Rs.3,000/- per month. Thereafter, the petitioner is

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not able to do any work. Hence, he filed an application in M.C.O.P.No.34 of 2004 before the Motor Accident Claims Tribunal, Sub Judge, Sankarankoil, claiming a sum of Rs.5,00,000/-.

3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.Ws.1 and 2 were examined and 14 documents viz., Exs.P1 to P14 were marked. On the side of the respondents, two witnesses viz., R.Ws.1 and 2 were examined and and one document viz., Ex.R1 was marked.

4. The Tribunal has awarded a sum of Rs.67,200/- as compensation with interest at the rate of 9%. Challenging the quantum of compensation, the claimant has filed the present appeal.

5. The learned counsel for the appellant/claimant would submit that due to the accident, the appellant has sustained grievous injury and his left leg has been fractured and he admitted in Puliangudi Government Hospital as in-patient for 65 days and thereafter, he was admitted in Government Rajaji Hospital, Madurai as in-patient for 32 days. He would further submit that the claimant was treated by P.W.2, Doctor, who examined him and gave a disability certificate under Ex.P.12. On the basis of Ex.P12, the disability is assessed at 50%. But the Tribunal has taken 30% disability. Hence, he seeks interference of this Court to the award passed by the Tribunal.

6. The learned counsel for the second respondent/ Insurance Company would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car belonging to the first respondent and arrived at correct compensation under various heads. Hence, he prays for dismissal of this appeal.

7. Heard the learned counsel appearing for both sides and perused the materials available on record.

8. Considering the above submission, this court is of the considered view that the ends of justice would be met by applying the judgment reported in *2013 (2) TN MAC 583 (NATIONAL INSURANCE Co. Ltd., v. G.RAMESH)*, Rs.3,000/- can be fixed for 1% of disability. Therefore, as per Ex.P12, the disability certificate, 50% disability can be taken into consideration and by applying the above said judgment, for 1% disability, Rs.3,000/- can be fixed. Therefore, the award of the trial Court regarding loss of income at Rs.43,200/- is enhanced to Rs.1,50,000/-. For pain and suffering, Rs.5,000/- is very low and it can be increased from Rs.5,000/- to Rs.1,00,000/-. For future medical expenses, no amount has been given, though plate has been inserted. Hence, for future medical expenses, Rs.50,000/- is awarded and the other heads are confirmed.

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9. In view of the settled position of law, this Court modifies

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the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	43,200	1,50,000	enhanced
2.	For Pain and Suffering	5,000	1,00,000	enhanced
3.	For Future Medical Expenses	-	50,000	granted
4.	For Nutrition	5,000	5,000	confirmed
5.	For Transportation	3,000	3,000	confirmed
6.	For Damages	1,000	1,000	confirmed
7.	For Medical Expenses	10,000	10,000	confirmed
	Total	67,200	**3,19,000**	By enhancing a sum of Rs.2,51,800/-

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.67,200/- (Rupees Sixty Seven Thousand and Two Hundred only) to a sum of **Rs.3,19,000/-** (Rupees Three Lakhs and Nineteen Thousand only) along with interest at the rate of 9% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents are directed to deposit the entire award amount of Rs.3,19,000/- (Rupees Three Lakhs and Nineteen Thousand only) with accrued interests 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. On such deposit being made, the appellant is permitted to withdraw the award amount with accrued interests and costs without filing any formal permission petition before the Tribunal. No Costs.

Sd/-
Assistant Registrar (RTI)

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Sub Assistant Registrar

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To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankarankoil.

Copy To:-

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 76777
+ 1 CC TO Mr.V.SASIKUMAR, ADVOCATE IN SR No. 76717

AKV
TE/KP/SAR-IV : 10/11/2017 : 4P/5C

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