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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1224 of 2005

Manager,
National Insurance Co. Ltd.,
Nethaji Road,
Cuddalore.

... Appellant/2nd Respondent

Versus

1.Kanniammal

... 1st Respondent/Claimants

2.Yasodaran

... 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.10.2004 made in M.A.C.T.O.P.No.1177 of 1999 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Cuddalore.

For Appellant : Mr.S.Vadivel

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.10.2004 made in M.A.C.T.O.P.No.1177 of 1999 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Cuddalore.

2. The facts of the case are as follows :

On 20.01.1999 at about 6.30 a.m., while the claimant was walking, the Omni bus bearing Registration No.TN 09 J 4455 came in a rash and negligent manner at high speed and hit against the claimant and he sustained grievous injuries. The accident occurred only at the negligence driving on the part of the driver of the bus. The claimant has claimed a sum of Rs.8,50,000/- as compensation.



3. The second respondent, in his counter statement, had denied the involvement of the vehicle by submitting the documents relating to the vehicle, regarding registration certificate, fitness certificate and permit. On the whole, the respondent denies the quantum of compensation and also the interest claimed by the claimants.

4. The Tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.2,52,000/- as compensation. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the Tribunal has not considered all the relevant materials placed before it, for awarding such a huge sum when the claimant suffered only 50% of the disability. The appellant has further stated that the sum awarded by the Tribunal is on the higher side for the permanent disability by taking into consideration the oral evidence of P.W.2, which is not justified. The Tribunal has awarded a sum of Rs.1,00,000/- for the future loss of earning capacity and Rs.12,000/- towards loss of income. Further the Tribunal has awarded some amount under various heads viz., pain and suffering, the attendant charge, etc., for which, no evidence was produced at all. On the whole, it is contended that the sum awarded by the Tribunal is exorbitant.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On a perusal of the records, it is observed that, due to the accident, the claimant sustained injuries, and he was admitted in the Villupuram Government Hospital and then he was referred to Pondicherry Jipmer Hospital, for which, Ex.P3 has been filed. Ex.P3 reveals the fact that he sustained injuries in the right thigh and also a fracture in the femur bone. P.W.2, the Doctor, by name Ramalingam was examined before the Tribunal and he has issued Ex.P6 disability certificate. Further, P.W.3, the Doctor by name Chandran was examined before the Tribunal and he has issued Ex.P7 disability certificate. The Tribunal has perused the medical certificate and found that there is no head injury. The Tribunal has not considered Ex.P7 and also the evidence of P.W.3. However, considering Ex.P3 and the evidence of P.W.2 and the disability certificate Ex.P6, the Tribunal has assessed the liability and awarded a sum of Rs.25,000/- for pain and suffering, Rs.5,000/- for nourishment and Rs.10,000/- for attendant charge. These sums awarded by the Tribunal is quite reasonable, considering the nature of injury, treatment and the assistance of the attender. The Tribunal has also verified the medical bills. As per Ex.P6, for the disability, the sum awarded by the Tribunal at Rs.1,00,000/- is



also quite reasonable. It is also verified that at the time of accident the claimant was doing textile business and he was aged 55 years. Considering the nature of occupation, his monthly income was fixed by the Tribunal at Rs.2,000/-. Thus calculated for six months Rs.12,000/- is a reasonable sum. The sum awarded by the Tribunal under disability, pain and suffering, nourishment, loss of income and future earning capacity calculated at Rs.2,50,000/- is quite reasonable.

8. Hence, in the opinion of this Court, the Tribunal has properly considered the nature of injury, treatment, medical expenses incurred by the claimant and loss of income and has awarded a reasonable amount. This Court is unable to see any reason to interfere with the findings of the Tribunal in this appeal.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Principal Sub Judge),
Cuddalore.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.S.Vadivel, Advocate sr.no.68208

C.M.A. No.1224 of 2005

kji(co)
nr 03/12/2018