IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.10.2018

CORAM:

THE HONOURABLE Mrs. JUSTICE S. RAMATHILAGAM

C.M.A.No.2260 of 2005

R.Shanmugam,
S/o.Raja Ram,
51, N.G.O.Colony,
7th Street, 70 feet Road,
Surampatti, Erode ... Appellant

Versus

1.C.Dhanapalan
2.R.Mohanasundaram

3.The Manager,
The Oriental Insurance Co., Ltd.,
11, E.V.N.Road, Parimalam Complex,
Erode. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 10.11.2004 made in M.C.O.P.No.278 of 2002 on the file of the Motor Accident Claims Tribunal/First Additional District Court, Erode.

For Appellant : Mr.N.Manokaran

For R3 : Mr.R.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 10.11.2004 made in M.C.O.P.No.278 of 2002 on the file of the Motor Accident Claims Tribunal/First Additional District Court, Erode.

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

On 23.08.2001, the claimant was travelling in a Maruthi Van bearing Registration No.TN-43-3400 from Erode to Coimbatore, driving in a minimum speed on the extreme left side of the road. At that time, one Tempo bearing Registration No.TN-33-B-2196 came from the opposite direction in a rash and negligent manner with high speed and hit against the Maruthi Van. Due to the accident, the claimant sustained severe injuries including fracture. Hence, on the ground that the accident occurred due to the rash and negligent driving on the part of the first respondent driver of the van, the claimant claimed a sum of Rs.8,00,000/- as compensation.

3. The third respondent/Insurance Company, in the counter statement, has stated that the driver and the owner of the van bearing Registration No.TN-33-B-2196 have not informed about the accident as per the terms and conditions of the policy. The other grievance raised by the 3rd respondent is that the insurer and owner of the van bearing Registration No.TN-43-3400 are not impleaded in the claim application. The other averment made is that the driver of the van did not possess any valid and effective driving license at the time of accident.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to the rash and negligent driving on the part of the first respondent. Hence, the Tribunal has fixed the liability on the third respondent. The Tribunal has also determined the compensation based on the age, occupation and income of the claimant and awarded a sum of Rs.1,40,460/- as compensation. Aggrieved against the said award, the appellant/claimant has preferred this appeal.

5. In the grounds of appeal, it has been stated that the claim made by the claimant ought to have been allowed as such. It is the grievance raised in the appeal that the Tribunal has failed to consider Exs.A1 to A28 and awarded very minimum compensation, without assigning any reason. The evidence of P.W.1 and 2 were not properly considered.

6. Heard both sides and perused the documents available on record.

7. On the side of the appellant, it is argued that the sum determined by the Tribunal is very much meager, when the claim has been made at Rs.8,00,000/-. It is further argued by quoting the Judgment in (2017) 3 SCC 351 (Sandeep Khanuja Vs. Atul Dande and another). The relevant portion of the Judgment reads as follows ;

> "9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible

but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases and that is now recognized mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand".

8.It is argued by the learned counsel appearing for the Insurance Company that though the claimant has preferred this appeal for enhancement, he filed proforma restricting his claim to Rs.1,00,000/- and he has also filed Court fee. Therefore, the arguments made by the claimant for enhancement cannot be considered.

9. On a perusal of the records, it is seen that the claimant is aged 21 years at the time of accident, his occupation was driver and he was earning Rs.2,500/- per month and a sum of Rs.8,00,000/- has been claimed. The Tribunal has observed that the claimant sustained injuries and the document Ex.P1 reveals the fact that he is a driver, and his driving license has been filed before the Tribunal. Based on the evidence of P.W.3, who has given the disability certificate stating that the disability suffered is at 68%, the Tribunal has awarded a sum of Rs.90,000/- for permanent disability and also awarded certain sum for pain and suffering and medical expenses. The Tribunal has properly considered the evidence with regard to the disability and awarded a sum of Rs.90,000/- and the sum awarded for pain and suffering as per Ex.8 and Ex.10 at Rs. 50,460/- is also found very much reasonable. Overall, the compensation awarded by the tribunal at Rs.1,40,460/- is quite reasonable. But, it is seen that though the claimant was awarded Rs. 1,40,460/- as compensation, he has mentioned in this appeal that he has restricted his claim to Rs.1,00,000/- and he has also filed a proforma dated 13.04.2005 to that effect.

10. In view of the fact that the claimant has restricted his claim to a sum of Rs.1,00,000/- and also filed a proforma dated 13.04.2005 to that effect, the Civil Miscellaneous Appeal

filed by the claimant for enhancement of the award amount stands dismissed. No costs.

11. Accordingly, the Insurance Company is directed to deposit the entire award passed by the Tribunal, with interest and costs as awarded by the tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the claimant's bank accounts through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lpp

To

The Motor Accident Claims Tribunal/
I Additional District Court,
Erode.

Copy to

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

+1cc to Mr.Manokaran, Advocate Sr.74645
+1cc to Mr.Sivakumar, Advocate Sr.74210

C.M.A.No.2260 of 2005

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srg 10/10/2019