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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.Nos.4175 & 4177 of 2005

M.Selvi

... Appellant in CMA.No.4175 of 2005/Petitioner

A.Venkatesan

... Appellant in CMA.No.4177 of 2005/Petitioner

Versus

1. P.Venkatesan

2. The Divisional Manager
National Insurance Co. Ltd.,
Vellore.

3. The Managing Director
Tamilnadu State Transport
Corporation Ltd.,
Dharmapuri.

... Respondents in both C.M.As/Respondents

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Decree and Judgment passed by The Additional District and Sessions Judge cum Fast Track Court, Tirupattur, in M.C.O.P. Nos.941 of 2002 & 1040 of 2002 respectively dated 31.01.2005.

For Appellants : Mr.F.Terry Chella Raja
for M.Malar (in Both)

For Respondents : Mr.S.Arun Kumar, for R2
Mr.D.Venkatachalam, For R3 (in Both)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been preferred against the Decree and Judgment passed by the Additional District and Sessions Judge cum Fast Track Court, Tirupattur, in M.C.O.P. Nos.941 of 2002 & 1040 of 2002 dated 31.01.2005.



2. The brief facts of the claim application are as follows :-

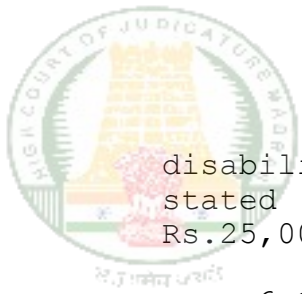
On 13.02.1998, the petitioners were travelling in the Auto bearing Registration No.TN.29.A.5767, driven by the first respondent and at the time, the bus belongs to the third respondent bearing Registration No.TN.29.N.0657 driven by its driver was coming in the opposite direction. Due to rash and negligence on both the drivers, both the vehicles were dashed each other. As a result, the claimants were sustained grievous injuries. They have filed separate claim petitions, claiming compensation of Rs.3,00,000/- each.

3.The third respondent/Transport corporation have stated in the counter that it is the Auto driver who had not stopped the Auto due to high speed, hit at the left side of the bus and caused damages in the front left portion and also the light and bumper. It is also stated that the state Transport Corporation has also filed 3rd party claim against the Auto driver of the Insurance Company. Hence the Transport Corporation is not liable to pay any compensation and the claimants are not entitle to claim any compensation from the Transport Corporation.

4.The Tribunal after analyzing the facts, evidence and arguments raised before the same, has given a common finding by holding that the accident took place only due to collusion of two vehicles. The Tribunal has also observed that it is the fault of both drivers who drove the vehicles at high speed and caused the accident and hence the liability on the Auto driver was fixed at 40% and at 60% on the Transport Corporation Bus. The Tribunal by taking into consideration of the nature of injury, the disability and pain and sufferings and other aspects has awarded a sum of Rs.5,000/- each to the claimants in MCOP.Nos.941 of 2002 and 1040 of 2002. The Tribunal has fixed the liability at 40% p.a., the driver of the auto and 60% on the Transport Corporation. Aggrieved by the said award, the claimants have preferred these CMAs for enhancement.

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5.Aggrieved by the award of Rs.5,000/-, the claimant in MCOP.No.941 of 2002 has preferred this appeal by stating that the sum awarded by the Tribunal is not at all reasonable one. The sum determined by the Tribunal not based on the injuries sustained by the claimant and also the amount spent by the claimant for medical expenses. The other aspects viz., Transportation, pain and sufferings and the period of treatment and the loss of income during the period of treatment and the



disability, were not considered by the Tribunal. It is further stated that even no fault liability, a minimum sum of Rs.25,000/- will be awarded.

6. On perusal of records, it is seen that the petitioner has sustained grievous injury and rash and negligent driving on the part of the drivers of two vehicles was also very much considered by the Tribunal. The sum awarded by the tribunal is not a proper one and it is against the provision of law. It is the argument advanced by the appellant that the injuries sustained by the petitioner has been very much stated in Ex.A5 series, wherein, the nature of injuries has been clearly stated in the said document and the said document was issued by the Government Hospital, Tirupattur. It is also argued by the appellant that the claimant sustained lacerated injury on the lower lip and further these suspect with regard to the fracture of lower jaw and displaced the teeth. The Ex.A5 reveals that there was continuous treatment from 13.02.1998 till 05.04.1998, but the Tribunal has not considered the nature of the injury, the period of treatment, pain and sufferings and the probable medical expenses that would have been incurred by the petitioner and awarded only a sum of Rs.5,000/- which is not at all a justifiable amount.

7. In view of the observation made and also the argument advanced by the claimant that there is suspicion for a fracture injury and also on considering the period of treatment and injury sustained by the petitioner which is grievous in nature, this Court is of the opinion that the sum awarded at Rs.5,000/- has to be considerably modified. Hence, in view of the injury sustained by the petitioner and also the period of treatment and the medical expenses incurred for the treatment, a sum of Rs.35,000/- is awarded under the various heads as follows:-

Heads	Amount modified by this Court in M.C.O.P.No.941/2002 (Rs.)
Grievous Injury	10,000/-
Pain and Sufferings	5,000/-
Medical Expenses	10,000/-
Extra Nourishment	5,000/-
Attender Charges	5,000/-
Total	35,000/-



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8. On perusal of Ex.A6 certificate issued by the Government Hospital, Tirupattur, it is seen that the claimant had sustained a lacerated injury on his forehead and also lacerated injury below the nose and the Doctor has also given the opinion that the injury number 3 is grievous in nature and the other injuries are of the simple in nature. It is argued that the appellant that they are unable to produce any document as a proof of treatment and medical expenses. Though in absence of documents, the sum awarded by the Tribunal at Rs.5,000/- is very meager. Hence, by considering the nature of injury, pain and sufferings and medical expenses incurred by the claimant, this Court is inclined to enhance the award passed by the Tribunal. Accordingly, a sum of Rs.20,000/- is awarded to the claimant under various heads as follows:-

Heads	Amount modified by this Court in M.C.O.P.No.1040/2002 (Rs.)
Grievous Injury	5,000/-
Pain and Sufferings	5,000/-
Medical Expenses	5,000/-
Extra Nourishment	5,000/-
Total	20,000/-

9. In view of the above modification, these civil miscellaneous appeals are partly allowed. No Costs.

10. The respondents are directed to deposit the enhanced award amount passed by this Court as apportioned by the Tribunal in respect of above appeals, with interest and costs, before 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 same to the claimant's bank account through RTGS within one week thereon. The rate of interest for the modified amount is 7.5% p.a. The appellants/claimants are directed to pay additional Court fee, if any for the enhanced award amount.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions
Judge cum Fast Track Court,
Tirupattur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to M/s.M.Malar, Advocate Sr.74491, 74493
+1cc to M/s.S.Arunkumar, Advocate Sr.74970
+2cc to M/S.D.Venkatachalam, Advocate Sr.73869, 73870

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srg 04/11/2019