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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.726 of 2018

Ezhilarasan

... Appellant/Claimant

-vs-

1.K.Ravi
2.The New India Assurance Co. Ltd.,
Motor third party claims office,
No.45, Moore Street,
Chennai - 600 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.01.2018 in MCOP.No.413 of 2014 passed by the Motor Accident Claims Tribunal (II Small Causes Court), Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents: Mrs.R.Sree Vidhya for R2

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

1. The injured claimant who was favoured with an award for a sum of Rs.2,44,958/- which was rounded off to Rs.2,45,000/- is the appellant.

2. According to the claimant, while he was travelling in the bus bearing registration No.TN-32-N-3232 along Cuddalore - Villupuram Main Road near Maligaimedu Sand Quarry, the bus bearing registration No.PY-01-BB-2593 belonging to the 1st respondent and insured with the 2nd respondent Insurance company came in opposite direction in a rash and negligent manner and dashed against the bus in which the claimant was travelling. As a result of the impact, the claimant suffered grievous injuries resulting in permanent disability. Contending that the claimant was forced to spend a huge amount towards medical expenses and



that the disability has resulted in loss of earning power, the claimant sought for a compensation of Rs.76,00,000/-.

3. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant. It is also contended that the drivers of both the buses viz., PY-01-BB-2593 and TN-32-N-3232 are responsible for the accident. The Insurance Company also disputed the nature of injuries and the quantum of disability apart from disputing the alleged loss of earning power.

4. The Tribunal on a consideration of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the bus bearing registration No.PY-01-BB-2593 which was admittedly insured with the 2nd respondent Insurance Company. We need not for the purposes of this appeal go into the question of negligence, inasmuch as the Insurance Company has chosen to accept the award.

5. On the quantum, the Tribunal awarded the following amounts under various heads:

Sl.No	Heads	Total Rs.
1.	Medical bills	Rs. 1,910/-
2.	Disability	Rs. 78,000/-
3.	Attendance charges	Rs. 2,000/-
4.	Loss of income	Rs.1,43,048/-
5.	Pain and Suffering	Rs. 10,000/-
6.	Transport to Hospital	Rs. 5,000/-
7.	Extra Nourishment	Rs. 5,000/-
	Total	Rs.2,44,958/-

6. The Tribunal rejected the medical bills and allowed only Rs.1,910/- towards medical expenses. The Tribunal found that unnecessary medicines have been prescribed and also concluded that all the bills relating to purchase of medicines are not reliable. The Tribunal granted a sum of Rs.1,43,048/- towards loss of income during the treatment period. Concluding that the percentage of disability is 26%, the Tribunal granted a sum of Rs.78,000/- towards permanent disability. Terming the compensation as very low, the claimant has come forward with this appeal.



7. We have heard Mr.R.Nalliyappan, learned counsel appearing for the appellant and Mrs.R.Sree Vidhya, learned counsel appearing for the 2nd respondent. The 1st respondent who is the owner of the offending bus had remained exparte before the Tribunal and hence, notice to him in this appeal is dispensed with.

8. From the disability certificate issued by the Department of Rehabilitation it is seen that the claimant had suffered 40% disability. The Tribunal has chosen to reject the said disability certificate on the ground that it is issued for the purpose of Government concession only. Such rejection of the certificate issued by appropriate Authority cannot be justified. We therefore conclude that the disability is 40% and not 26% as assessed by the Tribunal. Therefore, the quantum of compensation awarded under the head of disability is enhanced to Rs.1,20,000/- from Rs.78,000/-.

9. The claimant has produced medical bills which evidence medical expenses to an extent of Rs.9,35,980/-. The Tribunal has rejected those bills stating that the bills have been prepared for the purposes of claiming a huge amount as compensation. We do not concur with the said view of the Tribunal. The learned counsel for the Insurance Company was directed to verify the bills. Upon verification she would fairly state that the conclusion of the Tribunal that the bills are not genuine cannot be sustained. Documentary evidence in the form of medical bills is available to the tune of Rs.9,35,980/-, we therefore award the said sum of Rs.9,35,980/- towards medical expenses instead of Rs.1,910/- awarded by the Tribunal.

10. The Tribunal has awarded a paltry sum of Rs.2,000/- towards attender charges. Admittedly, the petitioner has undergone nearly 5 surgeries and has been an in-patient for more than 3 months. We therefore find that the awards under the heads of attender charges, pain and suffering, transportation to hospital and extra nourishment are abysmally low. We therefore enhance the award under the heads of attender charges to Rs.1,70,000/-, pain and suffering to Rs.1,00,000/-, transport to hospital to Rs.25,000/- and extra nourishment to Rs.10,000/-.

11. The claimant was aged about 24 years at the time of the accident and he was unmarried. The claimant was present before



us and we have seen the nature of dis-figurement caused to his right hand because of the accident. We therefore award a sum of Rs.1,00,000/- towards loss of marital prospects. From the nature of the injuries and the scars left, the claimant would need further treatment. It is also stated that the claimant will have to undergo another surgery for removal of plates and screws that were implanted. Hence we award Rs.50,000/- towards future medical expenses.

12. Fortunately, the claimant has not lost his job. But, at the same time, the disability caused because of the accident, particularly to his right hand, has affected his chances of promotion in the Department. The claimant being a Constable has got chances of future promotions. It is the common knowledge that the Police Department has got specific quotas for promotion of Constable as Head Constable and Head Constable as Special Sub-Inspector. PW2 who was examined to prove the loss of income had deposed that the claimant would loose his chances of promotion in future. We therefore award a consolidated sum of Rs.5,00,000/- towards loss of future prospects viz., promotion.

13. The amounts awarded under the various heads are as follows:-

Award towards		Amount
Medical bills	:	Rs. 9,35,980/-
Permanent disability	:	Rs. 1,20,000/-
Attender charges	:	Rs. 1,70,000/-
Loss of income	:	Rs. 1,43,048/-
Pain and suffering	:	Rs. 1,00,000/-
Transport to hospital	:	Rs. 25,000/-
Extra nourishment	:	Rs. 10,000/-
Loss of marital prospects	:	Rs. 1,00,000/-
Future medical expenses	:	Rs. 50,000/-
Loss of future prospects	:	Rs. 5,00,000/-
Total	:	Rs.21,54,028/-



14. The same is rounded off to Rs.21,54,000/-. Out of the above said sum of Rs.21,54,000/-, a sum of Rs.50,000/- awarded towards future medical expenses will not carry interest. The balance amount of Rs.21,04,000/- will carry interest at 7.5% per annum from the date of petition till date of payment.

15. The Insurance Company is directed to deposit the award amount as per the modified award less any amount if any already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit the claimant is permitted to withdraw the entire compensation.

16. In fine, the appeal is allowed in part with proportionate costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

dsa

To

The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.75390

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.76540

C.M.A. No.726 of 2018

SSI (CO)
GMY (05/08/2019)