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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2018

[Judgment Reserved on 26.03.2018]

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.M.A(MD)No.857 of 2014

Francis Xavier : Appellant / Petitioner

Vs.

1.Khaja Uduman

2.Mohaideen Jind Alya

3.United India Insurance Company Ltd.,
Door No.3E, Bala Vinayagam Koil Street,
Thoothukudi - 628 002.

Through its Branch Manager : Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 05.04.2014 made in M.C.O.P.No.432 of 2012, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

For Appellant : Mr.V.Sasikumar

For Respondent-1 : Mr.M.P.Senthil

For Respondent-3 : Mr.A.Ilango

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree dated 05.04.2014 made in M.C.O.P.No.432 of 2012, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

2.The appellant herein, who is the claimant in M.C.O.P.No.432 of 2012, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli, has filed a claim petition under Sections 166 and 140 of the Motor Vehicles Act,

claiming a sum of Rs.10,00,000/- as compensation with interest at 12% p.a., for the injuries sustained by him, in a road accident, which occurred on 16.07.2012.

3. The appellant, while he was riding a motor cycle, bearing Registration No.TN-69-AW-1710 from Southern side towards Northern side on the left hand side near Edaichivilai in the Thisayanvilai - Udankudi main road, the 2nd respondent drove the LMV Car - TATA Safari, bearing Registration No.TN-69-L-5868, in the opposite direction, in a rash and negligent manner and dashed against the motor cycle and thereby, caused accident, in which, the claimant sustained severe injuries and fractures. The second respondent is the owner of the offending vehicle and the same was insured with the 3rd respondent / Insurance Company.

4. The claimant was examined as P.W.1. The Ortho Doctor, who examined the claimant on 10.10.2012 and issued 65% disability certificate was examined as P.W.2. Nine documents were marked as Exs.P.1 to P.9, on the side of the claimant. No oral or documentary evidence was adduced by the respondents.

5. Based on the evidence recorded in the said claim petition, the Tribunal awarded a sum of Rs.3,57,500/- with interest at 7.5% p.a. along with proportionate costs towards compensation and directed the 3rd respondent to pay the said compensation amount on behalf of R1 and R2 by its Award, dated 05.04.2014. The compensation is awarded under the following heads:

S.NO	DESCRIPTION	AMOUNT IN (RS)
1	Loss of Income	6,000
2.	Transportation	2,000
3.	Extra Nourishment	2,000
4.	Attendant	2,000
5.	Medical Expenses	2,33,000
6.	Pain and Sufferings	15,000
7	Partial Disability	97,500
	TOTAL	3,57,500

6. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has preferred the present Civil Miscellaneous Appeal before this Court, for enhancement of compensation.

7. Notice to the 2nd respondent was dispensed with on memo filed by the appellant and the same was recorded.

8. It is contended that the appellant is disputing quantum of amount awarded in respect of loss of income, pain and sufferings, transportation, extra nourishment and assistance and also partial permanent disability. It is further contended that the Tribunal has



failed to award for future medical expenses and for removal of plates fixed in the fracture injuries.

9. The learned counsel appearing for the third respondent submitted that the Tribunal has rightly awarded the compensation claims, on the basis of the evidence on record produced by the claimant herein.

10. The accident took place on 16.07.2012, in which, the appellant / claimant sustained severe injuries in knees, heel, leg and hand and that he was immediately admitted in a private hospital viz., Manuvel at Therekal Puthur in Kanyakumari District, as inpatient on 16.07.2012 and was discharged on 02.08.2012 at 1.00 p.m. X-ray was taken and fractures were found in right leg, right knee and right forearm and the said injuries are grievous in nature, as per Exs.P5 and P6. Surgery was also done on 16.07.2012. Even after discharge, the claimant took treatment as outpatient in a private hospital viz., 'Manuvel Orthopedic Hospital', at Therekalputhu in Kanyakumari District and at T Jery Hospital in Thisayanvilai till 01.10.2013. The claimant was examined on 10.10.2013 by P.W.2 and X-rays were also taken, for issuing disability certificate.

11. Admittedly, P.W.2 treated the claimant for his injuries. On examination of the claimant and also on seeing the X-rays (Ex.P.9), P.W.2 issued Ex.P.8, disability certificate for 68% and also on perusal of wound certificate and AR copy and also the treatment particulars, on 10.10.2013, he has stated that screws were fixed in the right thigh bone and knee and screws were seen applied in right leg bone and there was a damage in the bone in the right thigh near the knee joint and due to the fracture on the right forearm bone and dislocation radiant surgery was done there. He opined that the claimant is not able to stand on his right leg due to the pain on right knee, hip and ankle, right elbow, forearm and wrist. There was no contra evidence on the side of the respondents to disprove the evidence of P.W.2 and the contents found in Ex.P.8 regarding disability of the claimant due to the impact of the accident. The claimant was doing Mason work prior to the accident.

12. The learned counsel for the appellant relied on a decision of this Court reported in National Insurance Company Ltd., Vs. G.Ramesh and another reported in (2013 (2) TNMAC 583) in which, compensation was awarded at the rate of Rs.3,000/- per percentage of disability in view of the present day cost of living. Hence, considering the above decision, the claimant is entitled to a sum of Rs.1,95,000/- (Rs.3,000 x 65) towards partial permanent disability, in the above stated circumstances, which would be more appropriate to accept Rs.3,000/- per percentage of disability.

13. Considering the above facts and circumstances of the case, the compensation payable would be as follows:-

S.N O	DESCRIPTION	AMOUNT IN RUPEES
1	Disability (Rs.3000 x 65)	1,95,000
2	Pain and Suffering	50,000
3	Extra Nourishment	15,000
4	Attendant Charges	3,000
5	Medical Expenses	2,33,000
6	Future Medical expenses (For removal of plate and screws)	20,000
7	Transport charges	2,000
8	Loss of Income (16 days as inpatient)	6,000
	TOTAL	5,24,000

*(The Ambulance charges of Rs.4,800/- is included in Ex.P7 / Medical Bills.)

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.3,57,500/- to Rs.5,24,000/- in this appeal. The 3rd respondent / Insurer is directed to deposit the modified enhanced award amount with interest at the rate of 7.5% per annum, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The claimant is entitled to withdraw the amount deposited on due application. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.
Madurai. **(Two Copies)**

+1cc to M/S.V.Sasikumar, Advocate SR.No. 63276
+1cc to M/S.M.P.Senthil, Advocate SR.No. 63415
+1cc to M/S.A.Ilango, Advocate SR.No. 63388

Judgment Made in
C.M.A (MD) No.857 of 2014

Dated:-
24.04.2018