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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2903 of 2004

Egalivan

..Appellant/Petitioner

Vs.

1.Sree Gnanaguru Agencies
rep.by its Proprietor,
22/1, Rajiv Gandhi Nagar, 45 feet Road,
Pondicherry (R1 exparte before the Tribunal)

2.The Divisional Manager,
M/s. The United India Insurance Co.Ltd.,
No. 46, J.N.Street, Pondicherry. ..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.04.2004, in M.C.O.P.No. 934 of 2003, on the file of the Motor Accidents Claims Tribunal, (Principal Sub Court), Pondicherry.

For Appellant : Mr.R.Arundattan
for M/s.C&K Law Firm

For Respondents : Mr.S.Ramalingam for R2
R1 - exparte before the Tribunal

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 934 of 2003, on the file of the Motor Accidents Claims Tribunal, (Principal Sub Judge), Pondicherry. He has filed the above said claim petition under Section 166(1)(a) of the Motor Vehicles Act, seeking compensation of Rs.1,00,000/- for the grievous injuries sustained by him in a road accident that took place on 21.07.2003.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 36 years on the date of the accident. He was working as Driver in A.F.T.Mill, Pondicherry and earning a sum of Rs.5,000/- per month.

(ii) On 21.07.2003, at about 07.15 p.m., the appellant/claimant was riding his cycle from north to south in the Cuddalore main Road. When he was in front of Indian Bank,



Mudaliarpet, the driver of the Auto Load Carrier bearing Registration No.PY 01 C 9816 belonging to the first respondent drove the vehicle in a rash and negligent manner in the opposite direction and dashed against the claimant's cycle. The claimant was thrown away from the cycle. Thereby, the appellant/claimant sustained grievous injury. Due to the said accident, the appellant/claimant sustained grievous injuries over the forehead and lacerated and injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to Government Hospital, Pondicherry. The rash and negligent riding of the rider of the above said Auto Load Carrier was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The owner of the Auto Load Carrier bearing Registration No. PY 01 C 9816, was absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Exhibit P1 to Exhibit P15 were marked. On the side of the respondents, no evidences were adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.33,540/- together with interest at the rate of 9% per annum and directed the first and second respondents therein to jointly and severally pay the said compensation to the appellant/claimant. Having not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. After hearing both the parties and perusing the materials available on records, it is seen that the Tribunal, based upon the evidence of P.W.1 and Exhibit P1-F.I.R and Exhibit P5-Discharge slip come to the conclusion that the claimant/cyclist was under the influence of alcohol and the manner of the accident has been discussed and thereafter, the Tribunal has held that the driver of the load lorry as well as the claimant for negligence and accordingly, fixed the liability at 50:50 and on re-appreciation of the evidence, I do not find any error in the said apportionment between the negligence on the part of the respective drivers and accordingly, 50:50 negligence fixed by the Tribunal is hereby confirmed.

5. On the point of quantum, both the parties are heard.

6. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant sustained grievous injuries over the forehead



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and lacerated and injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital, Pondicherry. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

7. The learned counsel appearing for the United India Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable.

8. After hearing both sides and taking note of the fact that Exhibit P15 Disability Certificate and also the evidence of P.W.2 Doctor-K.Ramanujam, the "disability" has been fixed at 50% and taking note of the evidence of P.W.2 in his evidence that he examined the appellant/claimant and noted the following disabilities:-

- (i) Severe headache often
- (ii) Elurred vision of both sides
- (iii) Tenderness on the scalp
- (iv) Grand mole type of epilepsy at time
- (v) Neck rigidity
- (vi) Quadriplegics
- (vii) Severe pain over the left leg
- (viii) Inability to do any work
- (ix) Vertigo
- (x) Lack of concentration

(xi) Amnesia recent events and the Tribunal has accepted the oral evidence of P.W.2-Doctor and fixed the disability at 50% and accordingly, awarded a sum of Rs.1,000/- for each 1% and awarded Rs.50,000/- as the negligence is fixed at 50:50 and the quantum has been apportioned and the said finding is hereby confirmed and accordingly Rs.25,000/- (Rs.1,000/-x25%) has been awarded before the Tribunal and the same is hereby confirmed.

9. Taking note of the injuries sustained by the claimant, it could be said that the appellant/claimant would not have attended duties for 3 months. Accordingly, a sum of Rs.15,000/- (Rs.5,000x3) is hereby awarded for 'loss of income'.

10. However, after going through Exhibit-P5 Discharge slip and taking into consideration of period of treatment as in-patient in hospital and in the interest of justice, Rs.5,000/- is hereby awarded for 'attender charges'.



11. Furthermore, the Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings' and it has been enhanced to Rs.10,000/-. Taking into consideration, the nature of injuries and he was taking treatment as in-patient, this Court is enhanced for a sum of Rs.10,000/- under the head of 'Transport charges'-. The appellant/claimant is entitled to a sum of Rs.5,000/- towards 'nutrition and extra nourishment' and under the head of 'damage to clothes', this Court awards a sum of Rs.500/-. Furthermore, the Tribunal has awarded a sum of Rs.3,541/- towards 'medical expenses' and the same is hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 934 of 2003 is modified as follows:-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent Disability	Rs. 25,000/-	Rs. 25,000/-
2.	Loss of income (Rs.5000/-x3)	----	Rs. 15,000/-
3.	Nutrition & Extra nourishment	----	Rs. 5,000/-
4.	Pain and sufferings	Rs. 5,000/-	Rs. 10,000/-
5.	Attender charges	----	Rs. 5,000/-
6.	Transport to hospital	----	Rs. 5,000/-
7.	Medical expenses	Rs. 3,541/-	Rs. 3,541/-
8.	Damage to clothes	----	Rs. 500/-
	Total	Rs. 33,541/- (rounded off Rs.33,540/-	Rs. 69,041/- (rounded off Rs.69,040/-

The compensation awarded by the Tribunal is enhanced from Rs.33,540/- to Rs.69,040/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.



(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.33,540/- to Rs.69,040/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/United India Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.69,040/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 934 of 2003, dated 27.04.2004 on the file of the Motor Accidents Claims Tribunal, (Principal Sub-Court), Pondicherry within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Pondicherry.

Copy to : The Section Officer, V.R.Section,
High Court of Madras.

+1 cc to M/s.S.Ramalingam, Advocate Sr.No. 40123
+1 cc to Mr.C.Munusamy, Advocate SR.No.38369

AKM/ 30.08.19/5P- 5C /

C.M.A.No.2903 of 2004