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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2177 of 2010

E.Iyappan

... Appellant /Petitioner

Versus

1.P.Geetha

2.N.Anitha

3.National Insurance Co.Ltd.,
No.751, Anna Salai, 2nd Floor,
Chennai - 600 002.

... Respondents/Respondents

[R1 & R2 remained ex-parte
before the Tribunal]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.11.2009 made in M.C.O.P.No.2605 of 2006, on the file of the IV Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms.S.Gayathri
for M/s.N.M.Muthurajan

For Respondents: Exparte - R1 & R2
: Mr.J.Chandran (for R3)

JUDGMENT

This appeal arises against the award of the IV Small Causes Court (Motor Accident Claims Tribunal), Chennai passed in M.C.O.P.No.2605 of 2006 on 23.11.2009.

2. Appellant is the claimant. First and second respondents are the daughters and the only legal heirs of the late Nagarajan, who was the owner of the offending vehicle, and the third respondent is the insurer thereof. On 27.08.2005 at about 5.00 p.m., while appellant was traveling in a car bearing Regn.No.TN-22-AL-8899 from Sivaganga to Chennai and the said Car was driven by its owner Nagarajan in rash and negligent manner and near Samiyarpatti Vilakku, the Car tyre got burst and as a result the driver lost his control and dashed against the road



side tree, in which the claimant and other passengers sustained injuries. The driver cum owner of the car died on the spot.

3.The claim was resisted by the Insurance company contending that the accident had occurred only due to the negligent act of the driver of the offending vehicle. The deceased driver himself is responsible and no other person or vehicle involved in the accident. Hence, the Insurance Company is not liable to pay compensation.

4.Before the Tribunal, on the side of appellant/claimant, two witnesses were examined and seven exhibits were marked. No one was examined on the side of Insurance company nor were any exhibits marked.

5.The learned counsel appearing for the appellant would contend that there is no dispute with regard to the rash and negligent manner of driving. The present appeal is filed, seeking enhancement of compensation as against the award of the Tribunal.

6.On the point of quantum, I have heard both counsel appearing for the respective parties and perused the materials available on record.

7.Based upon the evidence, the Tribunal fixed the negligence on the part of the driver of the car and the same is confirmed. It is seen from the records viz., Ex.P2/discharge summary, the appellant had taken treatment as in-patient from 28.08.2005 to 09.09.2005 and the deposition of the Doctor/PW.2, who examined the appellant and assessed the disability at 35%, that the appellant sustained fracture in his fifth rib left chest, haemothorex in left chest and other injuries. Considering the nature of injuries sustained by the appellant in the said accident, the Tribunal awarded Rs.30,000/- under the head of disability, which would be proper. However, this Court is calculated the claimant's disability at 35% and awarded Rs.35,000/-, at the rate of Rs.1000/- per percentage of disability.

8.Based upon Ex.P1/FIR, and the deposition of PW.1/appellant, the Tribunal held that the accident occurred only on the part of the driver of the Car and there is no contra evidence adduced on behalf of them. Therefore, the Tribunal has come to the conclusion and awarded a sum of Rs.58,000/- as compensation and the same was directed to be paid with interest at 7.5% p.a. from the date of petition till the date of deposit.

9.This Court is of the considered view that the appellant was working as driver and earning Rs.4,500/- per month. The



factum of avocation of the appellant was proved by Ex.P4/copy of driving licence, hence, for Loss of earning a sum of Rs.15,000/- is awarded as against of Rs.13,500/- awarded by the Tribunal. Considering the nature of the injury, an amount of Rs.2,000/- each awarded towards transport and extra-nourishment is enhanced to Rs.5,000/- & Rs.7,000/- respectively. Due to the period of hospitalisation, the amount awarded towards pain and suffering, damages, medical expenses, attendant charges viz., Rs.5,000/-, Rs.500/-, Rs.2,000/- and Rs.3,000/- respectively are meagre, and this Court feels that it need consideration to enhance. Accordingly, the amount awarded under the aforesaid heads are enhanced to Rs.10,000/-, Rs.1,000/-, Rs.7,000/- and Rs.5,000/- respectively. Hence, the compensation passed by the Tribunal is re-assessed and tabulated as hereunder:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of earning	Rs.13,500/-	Rs.15,000/-
Transport to Hospital	Rs.2,000/-	Rs.5,000/-
Extra-nourishment	Rs.2,000/-	Rs.7,000/-
Damages	Rs.500/-	Rs.1,000/-
Medical expenses	Rs.2,000/-	Rs.7,000/-
Future medical expenses	-	Rs.2,000/-
Attendants charges	Rs.3,000/-	Rs.5,000/-
Pain and suffering	Rs.5,000/-	Rs.10,000/-
Permanent disability	Rs.30,000/-	Rs.35,000/-
Total	Rs.58,000/-	Rs.87,000/-

10. In the result, the appeal filed by the claimants is partly allowed.

(i) The award passed by the Tribunal of Rs.58,000/- is enhanced to Rs.87,000/- as compensation.

(ii) The third respondent/ Insurance company is directed to pay the compensation amount Rs.87,000/- with interest at 7.5% per annum from the date of claim petition, till the date of payment, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iii) On such deposit being made, the claimant is entitled to withdraw the compensation amount, by moving appropriate application before the Tribunal.



(iv) The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The IVth Judge,
IV Small Causes Court,
(Motor Accident Claims Tribunal), Chennai..
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.N.M.Muthurajan, Advocate Sr.35571
+1cc to Mr.J.Chandran, Advocate Sr.34926

C.M.A.No.2177 of 2010

rsk[co]
srg 30/09/2019