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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.1550 of 2013

Munusamy

... Appellant/ Petitioner

Vs

1.K.A.Madalaimuthu
2.The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
No.105, Railway Station Road,
Tirupattur.

...Respondents/ Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.02.2010 made in M.A.C.T.O.P.No.1170 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Krishnagiri.

For Appellant : Mr.Mukund.R.Pandiyan

For Respondents : Mr.J.Chandran - R2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 19.02.2010 made in M.A.C.T.O.P.No.1170 of 2007 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Krishnagiri.

Brief facts leading to the claim application are as follows;

2. On 16.06.07 at 4.45 pm., when the claimant and his wife and one Thulasi were standing in the Chinna Kandili bus stop, waiting for the bus, at that time, a Tempo bearing Registration No.TN-23-A-8577, belonging to the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner without observing any traffic rules, hit against the claimant and caused the accident. As a result, the claimant sustained grievous injuries on his right leg and because of the



said injury, the claimant is unable to walk normally and he underwent treatment for a long period, suffering pain and mental agony. The claimant has claimed a sum of Rs.5,00,000/- as compensation.

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3. The second respondent/Insurance Company, in the counter statement, has denied the manner of accident and further stated that the driver of the Tempo drove the vehicle slowly and cautiously but, the accident had occurred only due to the sudden crossing of the deceased. It is further stated that the driver of the said tempo was not having valid and effective driving license at the time of accident and it is violation of policy conditions and hence, this respondent is not liable to pay any compensation to the claimant. The compensation claimed by the claimant as exorbitant.

4. The Tribunal after analyzing the evidence and documents, placed before it, has awarded a sum of Rs.38,000/-(Rupees thirty eight thousand only) against the claim of Rs.5,00,000/-(Rupees five laksh only) under the following heads :

Heads	Amount awarded by the Tribunal
Disability	Rs. 35,000/- (Rs.1,000 x 35%)
Nutrition	Rs. 1,000/-
Transportation	Rs. 1,000/-
Assistant	Rs. 1,000/-
TOTAL	Rs. 38,000/-

Aggrieved against the said judgment, the claimant/Appellant has preferred this appeal.

5.It is the grievance of the appellant in the grounds of appeal that tribunal has not considered the fact that the appellant was doing vegetable and coconut business at the time of accident and on account of the above accident the Appellant could not continue his work as before. Hence the court below ought to have applied multiplier method for calculating future loss of income and failed to consider that the injury sustained by the appellant are grievous in nature and the court below erred in awarding consolidated amount of Rs.1,000/- per percent of disability.

6. It is also the grievance of the appellant that the tribunal has not awarded any amount for pain and suffering and the sum awarded under the heads, Nutrition, Transportation and



assistant are very meager and the same have to be modified by considering the injuries and the disability sustained by the appellant.

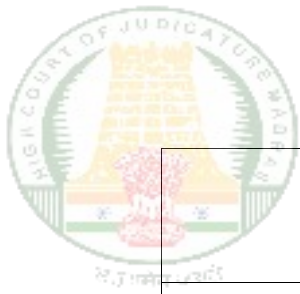
7. Heard both sides and perused the documents available on record

8. On a perusal of records, it is seen that the tribunal after investigation of evidence and documents placed, has awarded a sum of Rs.38,000/- (Rupees thirty eight thousand only) against the claim of Rs.5,00,000/- (Rupees five lakhs only). Aggrieved against the said award the claimant has preferred this appeal. It is argued by the appellant that he is unable to continue his work as he was doing before accident and hence the loss of income was not been properly considered by the tribunal. The sum awarded for disability by taking Rs.1000/- per percentage is also not sustainable. It is also argued by the appellant that no sum has been awarded under the head "pain and suffering" and total sum was awarded by the tribunal is not reasonable and against the law and provision.

9. The appellant/claimant has contended that when the claimant sustained injuries and suffered 35% disability, which is also supported by relevant document and evidence, the sum awarded by fixing at Rs.1000/- per percentage is not at all reasonable, since the claimant has sustained fracture of both bones in the right leg and he underwent treatment from 16.06.2007 to 03.07.2007.

10. This Court by taking into consideration the nature of injuries sustained by the claimant and also the disability sustained by him because of the accident and also considering the age of the claimant, is of the view that fixing a sum of Rs.2000 per Percentage would be reasonable. Accordingly, the sum awarded by the tribunal under the head 'Disability' at Rs.1000/- per percentage is modified as Rs.2000/- per percentage, hence for the disability, the sum awarded by the tribunal is enhanced to Rs. 70,000/- (2000 x 35). Likewise, considering the injuries and the treatment taken by the claimant, this court inclined to award some amount under the head pain and suffering. Accordingly, a sum of Rs.10,000/- is awarded under the head pain and sufferings. Since the sum award under the other heads viz., Nutrition, Transportation and Assistant are found reasonable and proper, this Court confirms the same.

The sum awarded by the Tribunal is modified by this Court as follows :



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Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Disability	Rs. 35,000/- (Rs.1,000*35%)	70,000/- (Rs.2000 x 35)
Pain and Suffering	-	10,000/-
Nutrition	Rs. 1,000/-	Rs. 1,000/-
Transportation	Rs. 1,000/-	Rs. 1,000/-
Assistant	Rs. 1,000/-	Rs. 1,000/-
Total	Rs. 38,000/-	Rs. 83,000/-

11. In view of the above enhancement, the Civil Miscellaneous Appeal is partly allowed. No costs. The appellant is directed to pay additional court fee, if any, for the enhancement amount.

12. The second respondent/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, 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 amount to the claimant's bank account thro' RTGS within one week thereon. The rate of interest shall carry the same as awarded by the tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsn
To
The Principal District Judge,
Krishnagiri.

2. The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.Mukund.R.Pandiyan , Advocate SR.No. 7215
+lcc to Mr.J.Chandran , Advocate SR.No. 7488

C.M.A.No.1550 of 2013

A.SK(26/08/2019)