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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.1799 of 2013

T.Kalanithi

... Appellant/Petitioner

Vs

State of Tamil Nadu

rep. by the Inspector General of Police

Admiralty House

Govt Estate, Chennai-2

...Respondent/Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.04.2009 made in M.C.O.P.No.5057 of 2004 on the file of the Motor Accident Claims Tribunal, (IVth Judge small causes court) Chennai.

For Appellant : Mr.V.Mohan choudary

For Respondent : Mr.N.Manimaran, Govt. Advocate

JUDGMENT

This Civil Miscellaneous has been preferred against the judgment and decree dated 27.04.2009 made in M.C.O.P.No.5057 of 2004 on the file of the Motor Accident Claims Tribunal, (IVth Judge small causes court) Chennai.

Brief facts leading to the claim application are as follows;

2. On 28.04.2002, at about 17 hours, when the petitioner was riding the motor cycle TN-20-L4377 slowly and cautiously in Anna nagar west, a Tata Sumo bearing registration No.TN-07-G-0033 came rashly and negligently from opposite direction suddenly cut-across to right and tried to enter on the southern of the 5th Avenue Road and in the process knocked down the motorcycle and thereby caused aforesaid grievous injurious to the petitioner. The respondent is the owner of the said Tata sumo TN-07-G-0033. Hence the respondent is vicariously and



statutorily liable to pay compensation with costs and interest from the date of accident.

3. The respondent has filed counter statement by stating that the occurred only due to the negligent on the part of the motor cycle, who ride the vehicle in a rash and negligent manner and in the result, the petitioner fell down and sustained injuries and also the petitioner in OP 5203/04 one Dayanithi was riding his motor cycle in rash and negligent manner on the wrong side and hit against the TATA sumo bearing Reg.No.TN-07-G-0033 belongs to this respondent. The motorcycle came in a rash and negligent manner and without observing the traffic rules and hit against the TATA sumo and in the result, the petitioner who is pillion rider and one Dayanithi who drove the vehicle were fell down and sustained injuries. The respondent's driver is no way responsible for the accident and hence the respondent denied the and liability and stated that they are not liable to pay any compensation and claiming of compensation against the respondent is not at all maintainable and the amount claimed by the petitioner is also highly excessive.

4. Based on the evidence and documents placed before the tribunal, the tribunal has given finding that the alleged TATA sumo was belonged to the respondent and the accident had occurred due to the rash and negligent driving on the part of the driver of the Tata sumo. The driver of the Tata sumo is employed under this respondent, hence the respondent is vicariously liable for the negligence act of their servant. Therefore, the tribunal has fixed the liability on the respondent and awarded a sum of Rs.1,58,000/- as compensation under various heads.

5. Aggrieved against the said judgment, the claimant has preferred this appeal for enhancement.

6. The grievance raised by the appellant in this appeal is that, the tribunal has not considered the earning capacity of the claimant while determining the compensation and also not considered the disability, pain and suffering and transport expenses. The compensation awarded by the tribunal is very low as against the claim of the petitioner. Hence he filed this appeal for enhancement of the award passed by the tribunal.

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

8. The Tribunal after analysing the evidence and documents placed before the same, has awarded a sum of Rs.1,68,000/- (One

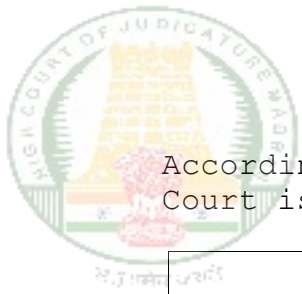


lakh and Sixty eight thousand only) against the claim of Rs.6,00,000/- (Six lakhs only). The tribunal has mentioned the award amount as Rs.1,58,000/- instead of Rs. 1,68,000/- . Aggrieved against the said award claimant has preferred this appeal for enhancement.

9. On the side of the appellant it is argued that the claimant was 23 years at the time of accident. Being a self employed person, running own Internet browsing centre and he was earning a sum of Rs.10,000/- (Rupees ten thousand only) per month. The tribunal has not considered the above said facts and fixed the monthly income at Rs.3000/- (Rupees Three thousand only) which is very much on the lower side. The further contention raised by the appellant is that the appellant was in treatment from 28.04.2002 to 27.05.2002. Being a business man, his earnings were very much affected during the treatment period, which was very much proved by exhibit P4 discharge summary. Hence, the grievance of the appellant is that the age income and occupation of the claimant was not properly considered by the tribunal. On the other hand, the respondent submitted that since the claimant himself is a owner of the internet browsing Centre, the injuries sustained by him will no way affect his income. The claimant has also not submitted any documents to prove his income.

10. On perusal of the records and the documents relating to the period of treatment, this Court finds that in the absence of any relevant document, the monthly income at Rs.3000/- (Rupees Three thousand only) fixed by the tribunal is not on the lower side. Hence, the monthly income fixed by the tribunal is very much reasonable.

11. Further, the disability sustained by the claimant because of the said accident and the injuries sustained by him are very much proved by the wound Certificate exhibit P3 and also the disability Certificate exhibit P7. This Court by considering the age of the claimant and the nature of injury, is of the view that the disability sustained by the claimant has to be properly considered. It is seen that the tribunal has determined the sum by taking Rs.1000/- per percentage of disability, which is very much meager. Hence, this Court modifies the sum by taking Rs.1500/- per percentage. Accordingly, the sum under the head disability is calculated as Rs.67,500/-. It is also argued by the appellant that there is no some award for attender charges, when the claimant was under treatment for a long period without assistant, he could not have maintain himself with such a nature of injury. Therefore Rs.5000/- is awarded for attender charges which this Court finds reasonable. The sum awarded by the tribunal in other heads are very much reasonable and that requires no modification.



Accordingly, the sum awarded by the tribunal is modified by this Court is as follows:

Head	Sum awarded by the tribunal	Sum modifying by this Court
Loss of earning	36,000	36,000
Transportation	10,000	10,000
Extra nourishment	10,000	10,000
Medical expenses	47,000	47,000
Pain and Suffering	20,000	20,000
Permanent disability	45,000 (45x1000)	67,500 (45x1500)
Attender charges	-	5,000
Total	1,68,000	1,95,500

12. In view of the above enhancement, the Civil Miscellaneous Appeal is partly allowed. No costs. Appellant/Claimant is directed to pay additional court fee for the enhanced award amount.

13. The Respondent 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 be 7.5% per annum.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vsn/ak
To
The IVth Judge, Small Causes Court, Chennai.

+2cc to Mr..V.Mohan choudary, Advocate SR.No.6316

C.M.A.No.1799 of 2013

GJ II(CO)
GMY (05/09/2019)