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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA. No.1934 of 2013

Vediappan

... Appellant/ Petitioner

Vs

1. Jeyapal

2. The Divisional Manager,
The New India Assurance Co.Ltd.,
No. 46, Big Street,
Tiruvannamalai.

... Respondents/ Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP.No. 230 of 2011 dated 11.12.2012 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvannamalai.

For Appellant : M/s. A. Subadra

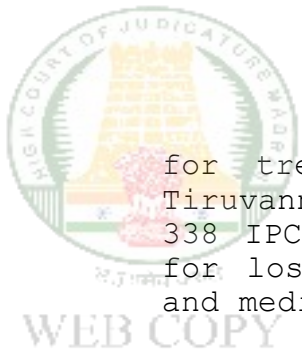
For Respondents : Mr. R. Neethi Perumal - R2
R1 - Exparte.

JUDGMENT

This CMA has been preferred by the claimants against the judgment and decree passed in MCOP. No. 230 of 2011 dated 11.12.2012 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruvannamalai.

Brief facts of the case are as follows;

2. On 27.04.2001 at about 9.15 am when the petitioner was riding his two wheeler bearing registration number TN09 AC 9068 in a slow and careful manner by following traffic rules in the extreme left side of the road and at the time a TATA Van bearing registration number TN 49 D 9364 belongs to the first respondent driven by its driver in a rash and negligent manner from West to East and dashed against the petitioner. In the result, the petitioner sustained serious injuries. The claimant was also taken to Tiruvannamalai Government General Hospital immediately



for treatment. A Criminal Case was also registered by the Tiruvannamalai Town Police in Crime NO. 795 of 2011 U/s. 279 & 338 IPC . The injured has claimed compensation for Rs.20 lakhs for loss of income, loss of earning power, pain and suffering and medical expenses, permanent disability.

3. The 2nd respondent/Insurance Company in the counter statement denied the mode of accident and negligence on the part of the first driver as stated by the claimant in the claim petition. The other aspects regarding claim made by the claimant under various heads also very much denied. The further averment made by the respondent/Insurance Company is that the petitioner himself had fallen down on the road and sustained injuries and the petitioner has not possessed valid driving license at the time of the accident.

4. The Tribunal upon analysing the evidence and documents, has given finding that it is the first respondent driver, who is responsible for the accident and awarded a sum of RS.1,47,000/- against the claim of Rs.20 lakhs under various heads. Aggrieved against the said judgment and decree, the claimant has preferred this Appeal for enhancement.

5. In the grounds of appeal, the claimant has stated that the tribunal without considering the evidence of claimant as well as the evidence of PW2 and PW3, has awarded a sum of Rs . 1,47,000/- which is very much meager as against the claim of Rs.20,00,000/-. The tribunal has also failed to consider the age of the claimant and also the occupation as mechanic, whose income was Rs.10,000/- at the time of the accident. The other grievance by the appellant is that the injury sustained by the claimant as per Exhibit P4 was not properly considered. The claimant was also given treatment in various hospitals for a long period and that aspect was also not considered by the tribunal. Total percentage of disability sustained by the claimant was assessed at 115%, whereas the tribunal has taken only 40% disability, which is against the law and probability. The sum awarded in other heads viz., damages to property, transport expenses, extra nourishment were also not reasonable, when the nature of injury is very greivous in nature.

6. Heard both sides and perused the documents available on records.

7. On the side of the appellant, it is contended that the claimant was working as a mechanic, who is aged about 20 years and earning Rs.10,000/- per month. Because of the said accident, he sustained severe injuries and sustained 115% disability and also incurred heavy medical expenses by way of



taking treatment in Tiruvannamalai General Hospital at the first instance and subsequently in various Hospitals. Though he was given treatment in various hospitals, his original health condition was not restored and still he is suffering with the said disability, which affected his regular occupation and earning capacity. These aspects were not properly considered by the tribunal and awarded a very meagre compensation to the claimant.

8. It is further argued by the appellant that the claimant sustained fracture injuries and the witnesses who were examined before the tribunal PW2 and PW3 have spoken clearly regarding the nature of injury and nature of treatment and the disability that resulted inspite of effective treatment. It is also brought to the notice by the appellant that he had incurred huge medical expenses, whereas the tribunal has not awarded any amount when the occupation of the claimant is mechanic and loss of income, loss of future earning capacity were not at all considered by the tribunal.

9. On the other hand the learned counsel for the Insurance Company/2nd respondent argued that the disability spoken by PW3 and PW2 are highly excessive and exorbitant and there is no clear evidence and documents to prove that the claimant had sustained 115% disability, hence the assessment of the tribunal at 40% is quite reasonable. It is further contended by the learned counsel that the surgery done for the ailment relating to the Urology and this was done to the claimant during the period of treatment, hence it is clear that the claimant has not suffered with the said disability continuously for a long time and there is no evidence and documents on this aspect to claim 115% disability and the medical expenses claimed by the claimant is also very much excessive and without any proof.

10. On hearing both sides and on perusal of records relating to the disability, medical expenses and future loss of income due to the said disability, it is seen that PW2 had deposed that the injured had fracture in the bones of superior pelvis and the movements of hip are restricted and assessed 35% disability. PW3 had deposed that the injured had sustained fracture in 4 bones had having difficulty to pass urine and a tube is fixed to pass urine and that has to be replaced once in 15 days, hence PW3 assessed the disability at 80% as permanent in nature. But no supportive documents were filed by the claimant to prove the same either before the tribunal or this Court. The tribunal has observed the said fact and assessed the disability at 40% and awarded a sum of Rs.80,000/- for the disability. The appellant herein is very much aggrieved on this aspect by arguing that when the claimant is 20 years and was earning Rs.10,000/- per month, his disability has to be properly considered and the



future loss of earning capacity also to be properly considered.

11. On perusal of the claim petition, it is seen that the claimant was 20 years at the time of the accident and sustained fracture injury in his hip, which results 35% disability, which has affected his career as mechanic, this aspect has to be properly considered. Hence the disability assessed by PW2 & PW3 at 35% and 80% respectively needs to be modified. Accordingly, this Court finds it proper if the disability is fixed at 60% and grant a sum of Rs.1,20,000/- (Rs.2000/- per percentage) under the head disability. It is also seen from the medical reports that the claimant has taken treatment only as out patient and there are no clear documents to prove that he had incurred heavy medical expenses as inpatient. Even though, there are no documents to prove the huge medical expenses incurred by the claimant as stated by him, this Court by considering the submissions that he had taken treatment in various hospitals, inclined to award Rs.15,000/- toward 'medical expenses' and Rs.5,000/- towards 'attendant charges' and enhance the amount awarded under the head 'Transport expenses' to Rs. 20,000/-.

12. By considering the nature of injury and disability, the sum awarded by the tribunal for loss of income at Rs.12,000/- for 4 months by taking monthly income at Rs.3,000/- is very much reasonable and does not require any modification. Likewise, the sum awarded by the tribunal under the head Nourishment and Pain and suffering is found reasonable and proper as per the documents and evidence, hence no modification is required for the sum awarded under the above heads.

13. The compensation awarded by the tribunal is modified by this Court is as follows;

Heads	sum awarded by the tribunal (Rs.)	sum modified by this Court (Rs.)
Loss of Income	12,000	12,000
Transport Expenses	10,000	20,000
Extra nourishment	5,000	5,000
Pain and Suffering	40,000	40,000
Disability	80,000	1,20,000
Medical expenses	--	15,000
Attedant charges	--	5,000
Total	1,47,000/-	2,17,000/-

14. In view of the above, the following order is made;



(i). The compensation is enhanced to Rs. 2,17,000/- from Rs.1,47,000/-

(ii). The Civil Miscellaneous Appeal is partly allowed. No costs.

(iii) The claimants shall pay the additional court fee for the enhanced award amount.

15. The 2nd respondent/Insurance Company is directed to deposit the entire modified amount awarded 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 at 7.5% per annum.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To
The Principal Sub Judge,
Motor Accident Claims Tribunal
Tiruvannamalai.

+1cc to M/s.M.Malar , Advocate SR.No. 2017

+1cc to Mr.R.Neethiperumal , Advocate SR.No. 2143

C.M.A.No.1934 of 2013

PA

A.SK(04/10/2019)