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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.373 of 2013

Viswanathan

... Appellant/Petitioner

Vs

1.Gopalakrishnan

2.Ruckumani

(Notice to R1 and R2 may be dispensed with
since they were set ex parte before the tribunal)

3.Iffco Tokyo General Insurance Co. Ltd.,
Kovai, by its Branch Manager,
Thulsi Chambers,
Third Floor, 195, T.V.Sami Road (West),
R.S.Puram, Coimbatore.

... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P.No.140 of 2009 on the file of the Motor Accident Claims Tribunal Cum Subordinate Court, Gobichettipalayam dated 28.08.2012 and for enhancement of compensation.

For Appellant	: M/s.C.Kulanthaivel
R1 & R2	: Ex-parte
For R3	: Mr.M.B.Gopalan

J U D G M E N T

The appellant/petitioner has preferred the present appeal, aggrieved by the order of Motor Accident Claims Tribunal, Subordinate Court, Gobichettipalayam in MCOP No. 140 of 2009 dated 28.08.2012 against the award of Rs.25,100/-.

2. Heard Mr.C.Kulanthaivel, the learned counsel appearing for the appellant and Mr.M.B.Gopalan, the learned counsel appearing for the third respondent.



3. The brief facts of the case are as follows:-

On 13.01.2009 at about 2.30 P.M, the appellant/petitioner was driving his Motorcycle bearing Registration No.TNQ 204 along with one Prakash as the pillion rider, proceeding from Kavundapadi to Gobichettipalayam road from east towards west near Marappanpalayam diversion road. At that time, the mini auto bearing Reg.No.T.N.36H 6436 in a rash and negligent manner proceeding from north toward south direction, dashed against the above said motorcycle due to which, the appellant/petitioner had sustained a blunt injury over his forehead, blunt injury on his head, loss of two teeth in the upper jaw, blunt injury over his left chest, abrasion over his right hand wrist, blunt injury over his right middle finger, blunt injury over his left thigh and multiple injuries all over his body. Immediately, the appellant/petitioner was taken to Dakshin Hospital, Gobichettipalayam. The appellant/petitioner was an inpatient in the hospital for 12 days. Subsequently, even after discharge from the hospital, the appellant/petitioner was undergoing treatment as an outpatient. At the time of accident, the petitioner was earning Rs.10,000/- per month. Due to the injuries sustained in the accident, the Tribunal awarded a sum of Rs.25,100/- as compensation to the appellant/petitioner.

4. Per contra, the third respondent/Insurance Company filed its counter statement stating that the policy was issued for the mini auto bearing registration No.TN 36 H 6436 for the period from 28.05.2008 to 27.05.2009 in the name of one P.S.Rukmani. The said P.S.Rukmani died on 24.09.2006 itself. The person who used the vehicle has been paying premium since the death of the insured, had concealed the same and had obtained policy in the name of the deceased person, without disclosing the same to this respondent insurance company. Therefore, the policy is invalid. Further stated that the accident has occurred only due to the carelessness and negligence of the appellant/petitioner who rode the motorcycle in a rash and negligent manner and that he had caused the accident.

5. The Tribunal after perusing the evidences and pleadings came to the conclusion that the negligence was on the part of the motorcyclist and awarded compensation of a sum of Rs.25,100/-

6. Aggrieved over the said findings and award, the appellant has come forward with the present appeal, challenging only against the quantum of award.

7. The grounds raised in the appeal are that the doctor (P.W.2) has issued the disability certificate in Ex.P18 and the wound certificate in Ex.P3 which would clearly establish that the claimant had sustained grievous injuries and the doctor (P.W.2) has deposed that the claimant has sustained 13% of



disability. The tribunal failed to consider the disability of the claimant and failed to award just compensation for loss of income during the period of treatment.

8. Due to the accident, the appellant sustained blunt injury on his head, loss of two teeth in the upper jaw, blunt injury over his left chest, abrasion over his right hand wrist, blunt injury over his right middle finger, blunt injury over his left thigh and multiple injuries all over his body.

9. The appellant, who had examined himself as P.W.1 had sustained grievous injury and he was examined by the dentist (P.W.2). On perusal of the medical records, it is seen that on physically examining the appellant/petitioner, and on taking x-rays (Ex.P.17), the dentist (P.W.2) has issued the disability certificate Ex.P.18, assessing the permanent disability sustained by the petitioner at 13%. Ex.P.2, wound certificate was issued to P.W.1 at Dakshin Hospital, Gobichettipalayam, from which it is evident that the appellant/petitioner has sustained a lacerated injury over his forehead and a contusion of 2*3 c.m over his forehead, an abrasion over the index and the middle finger. However, the Tribunal without considering the severity of the injuries, failed to award any compensation towards permanent disability.

10. Therefore, this Court is inclined to award compensation for the petitioner's permanent disability. The compensation for the disability is fixed by this Court at Rs.2,000/- per percentage and award a sum of Rs.26,000/-(2,000*13) as compensation for permanent disability. Further, this Court is also inclined to award Rs.15,000/- towards compensation for loss of income. This Court is not inclined to interfere with the compensation awarded on other heads by the tribunal and the same is confirmed.

11. Hence the total compensation payable to the appellant is as hereunder:

S. No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Transport to Hospital	Rs.3,000/-	Rs. 3,000/-
2	Extra nourishment	Rs.5,000/-	Rs. 5,000/-
3	Medical Expenses	Rs.9,078/-	Rs. 9,078/-
4	Mental agony and shock	Rs.3,000/-	Rs. 3,000/-
5	Pain and suffering	Rs.5,000/-	Rs. 5,000/-
6	Permanent Disability	-	Rs.26,000/-



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S. No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
7	Loss of Income	-	Rs.15,000/-
8	Total	Rs.25,078/-	Rs.66,078/-
9	Rounded to	Rs.25,100/-	Rs.66,100/-

12. The third respondent/Insurance Company is liable to pay a sum of Rs.66,100/- to the appellant as compensation with proportionate interest and cost.

13. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of two week thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

14. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.25,100/- is enhanced to Rs.66,100/-. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dh

To

The Motor Accident Claims Tribunal
Cum Subordinate Court,
Gobichettipalayam.

+1cc to M/s.C.Kulanthaivel, Advocate, S.R.No.10874
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.11486

C.M.A.No.373 of 2013

RSI (CO)
CS/08/08/2019