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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2710 of 2019

Muthusamy

Appellant/ Petitioner

Vs

1.Rajamanickam

2.The Oriental Insurance Company Limited,

Siva Complex, II Floor,

22C, Sarada College main road,

Salem District.

Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment in M.C.O.P.No.88 of 2017 dated 21.03.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode.

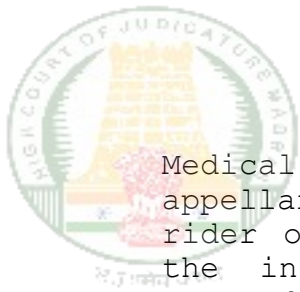
For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.88 of 2017 dated 21.03.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode. The claimant is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief case leading to the claim petition is that on 27.12.2015, at about 6.00 p.m., when the first respondent/rider of the Hero Honda Splender plus motor cycle bearing Registration No. TN 28 AT 1035 was proceeding in the Belur to Puluthikuttai main road near Kurichi Anai medu bus stop, the appellant/claimant was a pillion rider, the first respondent/rider of the said vehicle after letting a way to the tempo, which came in the opposite direction lost his control and fell down on the road along with appellant/pillion rider of the said vehicle, due to which the appellant/claimant sustained grievous injuries and surgery was also done to him. Due to the said fact, the appellant/claimant met with lot of sufferings including loss of income, pain and sufferings,



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Medical expenses and other related sufferings. The appellant/claimant claimed a sum of Rs.15,00,000/- from the rider of the said vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3.The second respondent/ Insurance Company denied the mode of the accident stated by the appellant/claimant, the rider of the said vehicle have a valid driving license at the time of the accident. Further, it is also observed that the rider of the said vehicle involved in the accident and the claim is made only with collision between the claimant and rider and owner of the above said vehicle. Apart from that, the sum claimed by the appellant/claimant as excessive one in the absence of any document and proof.

4.The Tribunal after analysing the evidence and document has given up finding that the accident occurred due to the rash and negligent riding of the first respondent, who is the rider and owner of the motor cycle bearing Registration No.TN 28 AT 1035. Hence, the negligence is fixed on the part of the rider and owner of the said vehicle. While determining the compensation, the Tribunal has assessed the nature of injuries, medical expenses and disability sustained by him and awarded a sum of Rs.4,31,000/- under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of income and others	25,600.00
2.	Transport expenses	5,000.00
3.	Extra nourishment	6,000.00
4.	Damages for clothes and articles	500.00
5.	Medical Expenses and others	94,300.00
6.	Pain and sufferings	50,000.00
7.	Loss of future earning, disability and loss of earning power	2,49,600.00
Total		4,31,000.00

5.Aggrieved against the said award, the appellant/claimant has preferred this appeal. In the ground of the appeal, the appellant/claimant stated that though the Tribunal has given finding that the accident occurred on the part of rash and negligent riding of the rider of the motorcycle, the sum awarded by the Tribunal as compensation is very meager and it is against the ruling of this Court as well as the Hon'ble Apex Court. The monthly income of the appellant/claimant who is doing agricultural work was earning



a sum of Rs.20,000/- per month and the said sum has been properly considered by the Tribunal. The nature of injuries, method of treatment and also the disability sustained by him were not properly considered.

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6. The other grievance raised by the appellant/claimant is that the award passed by the Tribunal under the heads of future prospects and attender's charges were not properly considered. For transport expenses and extra nourishment, the Tribunal has awarded a very meagre sum. Regarding the disability, the Tribunal has taken only 10% as against the assessment made in Ex.C1 as 30%. Hence, the award of the Tribunal is very much meager. Hence, the appellant/claimant preferred this appeal to set aside the award passed by the Tribunal.

7. Heard, Mr.T.S.Arthanareeswaran, learned counsel for the appellant and Mr.J.Chandran, learned counsel appearing for the second respondent.

8. On hearing both sides and perusing all the records, it is observed that the appellant/claimant sustained grievous injuries due to the accident and the nature of injuries are very much discussed in Ex.P3 /Accident Register. Ex.P4 and Ex.P5 are the Discharge summary and Wound certificate. These documents reveal the fact that, he was taken treatment at Dharan Hospital, Salem for first aid and again he was admitted in Ganga Hospital, Coimbatore and treated as an inpatient from 27.12.2015 to 02.01.2016.

9. The Tribunal has also considered the age of the injured as 45 years at the time of the accident, he was doing agricultural work and earning a sum of Rs.25,000/- per month. The Tribunal has taken the annual income at Rs.12,800/-, after adding 25% future prospects and applying the multiplier, the loss of earning capacity determined by the Tribunal at Rs.2,49,600. Regarding medical expenses, the Tribunal has verified the medical bills (Ex.P6) produced by the claimant for a sum of Rs.94,300/- and awarded the same. The sum awarded under the head of pain and sufferings is very much reasonable by awarding Rs.50,000/-. For the loss of income and others, the Tribunal has awarded a sum of Rs.25,600/- is also reasonable. In total, the award passed by the Tribunal under various heads are just and reasonable and hence, this court is not inclined to interfere with the award of the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The 2nd respondent herein / Oriental Insurance Company Limited shall deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such



deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkr

To:

1.The Motor Accident Claims Tribunal,
Special Subordinate Judge Court,
Erode.

+2ccs to Mr.T.S.Arthanareeswaran , Advocate SR.No. 55632

+1cc to Mr.J.Chandran , Advocate SR.No. 56422

C.M.A.No.2710 of 2019

A.SK(16/12/2019)

03.07.2019