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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.3653 of 2014 &
C.M.P.No.1 of 2014

The Branch Manager,
New India Assurance Co Ltd.,
Branch Office,
No.163, M.B.T.Road,
Navalpur,
Ranipet-632 402.

.. Appellant/2nd Respondent

Vs

1.Jeeva

..1st Respondent/Petitioner

2.A.Malathy

..2nd Respondent/1st Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P No. 166 of 2013 on 21.03.2014 on the file of the learned Motor Accident claims Tribunal (Subordinate - Judge) at Hosur -District.

For Appellant	:	Mr.J.Chandran
For R1	:	Mr.PA.Sudesh Kumar
For R2	:	not ready for notice (Both Due)

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree passed in M.C.O.P No. 166 of 2013 on 21.03.2014 on the file of the learned Motor Accident claims Tribunal (Subordinate - Judge) at Hosur

Brief facts leading to the claim application are as follows;

2. On 18.02.2013 at about 18.45 hours (6.45 P.M), the petitioner was traveling as a pillion rider in TVS Victor Motor

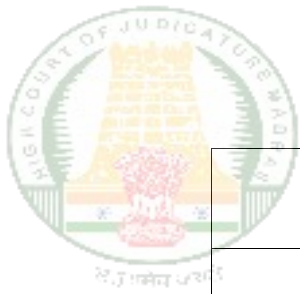


cycle bearing Registration No.TN.70/A.0792. The said vehicle was driven by one Arunkumar, son of prakasam. While the said rider Arunkumar, was proceeding on the left side of the road, slowly and cautiously, observing the traffic rules and sounding horn on Bangalore to Hosur Road near Gowripriya Industries Company, the driver of the lorry bearing Registration No.TN.73/c.9969, belonging to the 1st respondent and insured with the 2nd respondent came in the opposite direction in a rash and negligent manner and at an uncontrolled speed, without sounding horn and without minding the rules of the road, dashed against the TVS victor motor cycle and caused the accident. He was under treatment for four months from 19.02.2013 continuously as a out patient. The claimant has claimed a sum of Rs.10,00,000/- as compensation.

3. The second respondent/Insurance Company, in the counter statement, has denied the manner of accident and further stated that the allegations averred in the petition are all false and incorrect. It is stated that the Insurance Company is entitled to contest the case under Section 170 of Motor Vehicle Act. It is further stated that the alleged accident did occur due to the sole negligence of the rider of motor bike, who is the complainant. The complainant by suppressing the manner of accident has managed to project a false and incorrect story before the police to safeguard his own interest. The alleged accident did not occur due to rash and negligent driving of the driver of the lorry. Hence, the Insurance Company sought for dismissal as against the judgment and decree passed by the tribunal.

4. The Tribunal after analyzing the evidence and documents, has awarded a sum of Rs.8,92,800/- as compensation to the claimant holding that the driver of the lorry is responsible for the accident and fixed the liability on the Insurance Company. The compensation awarded by the tribunal under various heads as follows;

Heads	Amount awarded by the Tribunal
Permanent disability	Rs. 7,77,600/-
Nutrition and healthy food	Rs. 30,000/-
Attended charges for 3 months	Rs. 18,000/-
Loss of social enjoyment, frustration etc.,	Rs. 30,000/-
Loss of earnings (6x6000)	Rs. 36,000/-
Medical bills	Rs. 1,200/-



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Heads	Amount awarded by the Tribunal
TOTAL	Rs. 8,92,800/-

5. Aggrieved by the said judgment, the Insurance Company has preferred this appeal to set aside the amount passed by the tribunal.

6. It is the grievance in this appeal is that the compensation awarded at Rs.8,92,800/- in a case of injury is highly excessive, exorbitant and unsustainable in law and further stated that the tribunal ought to have held that the accident occurred solely due to rash and negligent act of the petitioner and reduced the compensation u/s. 140 of MV Act. It is also the further grievance of the appellant that the tribunal considering the admitted facts and circumstances of triple driving in column no. 23 of the claim petition that the petitioner Jeeva travelled in the Motor Cycle bearing registration No. TN 70-A-0792 along with one Sibi and Minor Arun Kumar, who was not qualified to hold a driving license ought to have concluded that the accident was due to negligence on the part of the motor cyclist. The tribunal has ignored the material aspects and by merely relying upon the FIR, erroneously concluded that the fault is on the driver of the lorry. The sum awarded under the head loss of earning at Rs.5,18,400/- by fixing the monthly income at Rs. 6000/- and by applying multiplier 18 and adding 50% future prospects in the absence of any assessment of disability was strongly contended by the appellant. The sum awarded under the other heads are also stated to be excessive.

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

8. It is argued by the learned counsel for the appellant that the injuries sustained by the claimant are not grievous in nature and the disability assessed at only 40 percent and to substantiate the same, the claimant has not filed any relevant documents. The tribunal without any documentary proof with regard to the nature of injuries the period of treatment and the mode of treatment especially, the documents relating to the disability, determining the loss of income by applying the multiplier method is not sustainable in law. It is further contended that PW2(Dr.Gandhi) who has assessed the disability at 40 percent has not verified any of the documents relating to the injury sustained by the claimant.



9. On the other hand the respondent has argued that the claimant has sustained head injury, which resulted in fracture of the skull bone and he was under treatment for long time and hence the disability assessed by the doctor is very much reasonable.

10. On perusal of the records it is seen that PW2 Dr.Gandhi has deposed the report before the tribunal, he has not verified the wound certificate, accident register. It is also clear evidence that no surgery was done to the claimant and further the fracture is also very much united and there is no damage for the brain. Hence, the disability certificate and also the evidence placed before the tribunal does not warrant any multiplier method for assessing the loss of income. It is also observed that there is no accident register filed before the tribunal and the discharge summary is also not filed before the tribunal. It is further seen that the tribunal has assessed the monthly income of the injured person at Rs.6000/- and by applying the multiplier, loss has been determined without the accident register and discharge summary. The tribunal has also assessed the loss of income during the treatment period, apart from that, the future prospects also assessed by the tribunal without any relevant document for the income of the injured person. There is also argument on the side of the respondent that still the claimant is suffering from disability inspite of the re-union of fracture in the head but no supporting document were filed by the respondent / claimant before the tribunal.

11. In the absence, of any relevant document with regard to the nature of injury, period of treatment, mode of treatment, the sum arrived by the tribunal is liable to be modified. Since the P.W2 has mentioned the reason for the disability, this Court does not want to change the percentage of disability, but by considering the fact there is no proof of income has been placed before the tribunal or before this Court, this Court is of the view that fixing of Rs.3000/- per percentage would be reasonable for calculating the permanent disability without adopting multiplier method, in view of the non production of relevant documents. Accordingly, the sum under the head permanent disability is modified at Rs.1,20,000/- (40 x 3000). Likewise, in the absence of any discharge summary the sum awarded under head loss of earning for six months is also not proper, therefore that amount is set aside. Similarly, the sum awarded under head "loss social enjoyment, frustration etc" is also without any evidence and supporting documents, hence the said amount is also set aside. Further, considering the nature of injuries as per Exhibit P6(copy of wound certificate original), the claimant has sustained to grievous injuries. Hence, this Court by considering the said injuries, inclined to award a sum



of Rs.30,000/- for pain and suffering. In view of the above said discussion, the sum awarded by the tribunal is modified as below:

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Permanent disability	Rs.7,77,600/-	Rs.1,20,000/- (40x3000=1,20,000/-)
Nutrition and healthy food	Rs.30,000/-	Rs.30,000/-
Attended charges for 3 months	Rs.18,000/-	Rs.18,000/-
Loss of social enjoyment, frustration etc.,	Rs. 30,000/-	--
Loss of earnings (6x6000)	Rs.36,000/-	--
Pain and Suffering	--	Rs.30,000/-
Medical bills	Rs.1,200/-	Rs.1,200/-
TOTAL	Rs.8,92,800/-	Rs.1,99,200/-

12. In view of the above modification, the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as stated infra:-

(1) The award granted by the Tribunal is reduced to Rs.1,99,200/- from Rs.8,92,800/-.

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) This court by order dated 23.12.2014 directed the appellant/Insurance Company to deposit the entire award amount and further granted permission to the claimant/respondent 1 to withdraw 50% of the amount without furnishing security. Therefore, excess amount, if any, in deposit can be withdrawn by the appellant/Insurance Company after satisfying the order of this court.



(4) The Tribunal is directed to transfer the modified amount to the claimant's bank account throu' RTGS within one week from the date of receipt of a copy of this order.

(5) There will be no order as to costs in this appeal.

(6) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vsn

To

The Subordinate Judge, Hosur

+1cc to Mr.J.Chandran, Advocate SR.No.7496

+1cc to Mr.PA.Sudesh Kumar, Advocate SR.No.6897

CMA.No.3653 of 2014 &
C.M.P.No.1 of 2014

GJ II(CO)
GMY(20/09/2019)