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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
AND

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A(MD)NO.1008 of 2016

and

C.M.P(MD)No.9073 of 2016

The Branch Manager,
The New India Assurance Company Limited,
149, Bharathiyar Road,
Karaikal -2. :Appellant/Second Respondent

.vs.

1.Sivaprakasam :1st Respondent/Petitioner

2.Mohandas :2nd Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, praying this Court to set aside the judgment and decree made in M.C.O.P.No.95 of 2014, dated 24.2.2015, on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Thanjavur at Kumbakonam.

For Appellant :Mr.R.Maheswaran
for M/s.G.Prabhu Rajadurai

For Respondent-1 :Mr.R.Karunanithi

For Respondent-2 :Notice dispensed with
vide memo, dated 26.03.2018

JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM, J.**]

Aggrieved over the award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thanjavur at Kumbakonam passed in M.C.O.P.No.95 of 2014, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2.The facts in brief:

On 16.08.2013, the claimant was riding his motor cycle on Kumbakonam-Thanjavur Main Road and when he was nearing Krishnapuram, a Tata Sumo Car came from the opposite direction driven by its driver in a rash and negligent manner, hit against the two wheeler. In the accident, the claimant had sustained



multiple fractures and immediately he was taken to Government Hospital, Kumbakonam and from there, he was shifted to Cauvery Medical Hospital, Trichy. He underwent surgeries and his right leg was amputated and steel plate was fixed in his right hand. He sought for Rs.30 lakhs as compensation.

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3.The appellant/Insurance Company resisted the claim application by filing a detailed counter categorically stating that the claimant was responsible for the accident and age and income of the claimant was also disputed by the appellant.

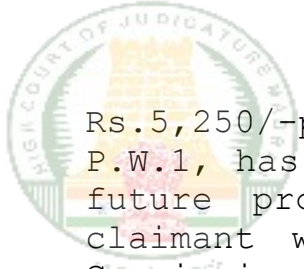
4.Before the Tribunal, the claimant had produced the copy of the First Information Report-Ex.P1 and the claimant deposed in support of his case. Based on the evidence of P.W.1 and Ex.P1-First Information Report, the Tribunal came to the conclusion that the driver of the Tata Sumo car was responsible for the accident. One Dr.Vijayakumar was also examined as P.W.2 and he produced the Disability Certificate stating that the claimant had sustained 85% of disability. The Tribunal has taken the income as Rs.5,250/-p.m and awarded compensation of Rs.29,61,950/-. Challenging the award, the present Civil Miscellaneous Appeal has been filed.

5.Mr.R.Maheswaran, learned counsel for the appellant would submit that though the appellant had produced the Sketch to establish that the claimant was responsible for the accident, the Tribunal had failed to take into consideration the documentary evidence. It is further contended that the award of the Tribunal is on higher side.

6.Per contra, Mr.Karunanithi, learned counsel for the claimant made submissions in support of the findings of the Tribunal and further contended that the claimant was working as Clerk in Kudavasal Town Benefit Fund and was earning a sum of Rs.5,250/-p.m as salary and also working as Agent of Life Insurance Corporation of India and thereby earning a sum of Rs.6,500/- to Rs.8,000/-p.m.

7.In the instant case, it is seen from the records that the Sketch, which has been marked as Ex.R1 reveals that the accident had taken place in a turning and almost in the middle of the road, but the Tribunal, without properly appreciating Ex.R1 and by relying upon the evidence of P.W.1 and Ex.P1, held that the driver of the Tata Sumo Car was solely responsible for the accident. A perusal of the records would categorically establish that the claimant had also contributed to the accident and hence, it would be appropriate to fix negligence at the ratio of 50:50.

<https://hcservices.court.gov.in/hcservices/> 8.In regard to the quantum, though the claimant had contended that he was working as a Clerk in a Chit Fund Company, no Salary Certificate was produced to prove that he was earning



Rs.5,250/-p.m. However, the Tribunal, accepting the evidence of P.W.1, has fixed the income at Rs.5,250/-p.m and added 50% towards future prospects. Perusal of the Pass-book produced by the claimant would establish that he was also getting income as Commission Agent of LIC. In the above facts, it would be appropriate to fix the income of the claimant as Rs.5250+Rs.4,750/- = **Rs.10,000/-p.m.** As per the Latest decision of the Honourable Apex Court in ***Pranay Sethi's case (National Insurance Company Limited .vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases, 680)***, the claimant is entitled to additional 40% towards future prospects and hence income is arrived at Rs.14,000/-p.m. Since the claimant has contributed for the accident, income is reduced to Rs.7,000/-p.m.

9.The Disability Certificate-Ex.P21 and the evidence of P.W.2 establish that the claimant had sustained 85% disability and by applying multiplier of '18', the total loss of income is arrived at Rs.12,85,200/-. The amount of Rs.50,000/- and Rs.25,000/- awarded towards transportation and extra nourishment are confirmed. Considering the nature of injury and the prolonged treatment, this Court awards a sum of Rs.1 lakh towards pain and suffering and Rs.2 lakhs towards loss of marital prospects. The award of the Tribunal with regard to damage to clothe and articles, attendant charges and medical expenses at Rs.3,279/-, Rs.50,000/- and Rs.6,87,821/-, respectively are confirmed and accordingly, the claimant is entitled to a total compensation of Rs.24,01,300/- rounded off to Rs.24,00,000/-(Rupees twenty four lakhs only). The interest at 7.5% p.a. stands confirmed.

10.Accordingly, the Civil Miscellaneous Appeal is partly allowed and award of compensation is reduced from Rs.29,61,950/- to Rs.24,00,000/-(Rupees twenty four lakhs only). It is represented that the entire award amount has been deposited to the credit of claim petition and 50% of the award amount was already withdrawn by the claimant. The Claimant is entitled to receive the balance of modified award amount with proportionate accrued interest and costs by filing necessary application before the Tribunal. The Tribunal is directed to refund the excess award amount to the appellant/Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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To

The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Thanjavur at Kumbakonam.

Copy to

The Record Keeper, -2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.KARUNANIDHI, Advocate (SR-56916[F] dated 27/03/2019)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-56849[F] dated 27/03/2019)

vsn

JUDGMENT MADE IN
C.M.A (MD) NO.1008 of 2016
and
C.M.P (MD) No.9073 of 2016
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KM/ (26.04.2019) 5P 6C