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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1644 of 2013

Palanisamy ... Appellant/Petitioner

Vs.

1.Prabhu

2.Duraisamy

3.The Oriental Insurance Company Limited,
RVR Building, 1st Floor,
No.54, First Floor, Dhali Road,
Udumalpet.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.03.2012 made in M.C.O.P.No.252 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R1 : No appearance
For R2 : Died (T/E)
For R3 : Mr.S.Arunkumar

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.03.2012 made in M.C.O.P.No.252 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

3.The appellant is the claimant in M.C.O.P.No.252 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur. He filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.02.2009.

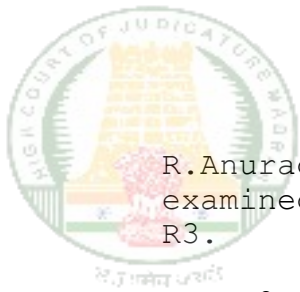


4. According to the appellant, on 07.02.2009 at about 09.00 A.M., while he was riding the motorcycle bearing Registration No.TN 39 S 4104 along with the appellant in C.M.A.No.1645 of 2013 as pillion rider on the extreme left side of the Kattur Pudhur - Koduvai Road, near Nal Road, the 1st respondent - driver of the van bearing Registration No.TN 39 C 5600 belonging to the 2nd respondent drove the van in a rash and negligent manner, dashed against the motorcycle in which the appellant was riding and caused the accident. In the accident, the appellant was thrown away from the motorcycle and the appellant's head was severely injured and he sustained multiple injuries all over the body. Immediately after the accident, the appellant was taken to Pongalur Private Hospital and thereafter he was referred to Ramakrishna Hospital, Coimbatore. Therefore, the appellant filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondents, being the driver, owner and insurer of the van respectively.

5. The respondents 1 and 2 being the driver and owner of the van remained exparte before the Tribunal.

6. The 3rd respondent-Insurance Company, being the insurer of the van belonging to the 2nd respondent filed counter statement and denied all the averments made by the appellant. The 3rd respondent denied the manner and place of accident. According to the 3rd respondent, the accident has occurred only due to rash and negligent riding of the motorcycle by the appellant. The appellant has to prove that the 2nd respondent's van was involved in the accident. A false complaint was given to the Police and based on the false complaint, a case has been registered only for claiming compensation. The appellant and the 1st respondent were not possessing valid driving license and both the vehicles involved in the accident does not have fitness certificate, permit, etc, and there is breach of terms and conditions of the insurance policy. Hence, the 3rd respondent is not liable to pay any compensation. The appellant has to prove his age, avocation, nature of injuries, disability and period of treatment taken by producing valid documents. The nature of injuries suffered by the appellant as stated by him are false. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the appellant in C.M.A.No.1645 of 2013 was examined as P.W.1, Dr.Senthilkumar was examined as P.W.2 and one Chinnasamy was examined as P.W.3 and Kumaran, who is the Senior Assistant in Tamil Nadu State Transport Corporation, Coimbatore Division as P.W.4 and 23 documents were marked as Exs.P1 to P23. On behalf of the 3rd respondent-Insurance Company, one E.V.Usha was examined as R.W.1, one



R.Anuradha, who is an official from R.T.O., Udumalpet was examined as R.W.2 and three documents were marked as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the 2nd respondent's van to pay a sum of Rs.14,11,000/- as compensation to the appellant at the first instance and recover the same from the 2nd respondent-owner of the van.

9.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

10.The learned counsel appearing for the appellant contended that the appellant has suffered grievous head injury and suffered 85% of partial permanent disability. The appellant proved that he suffered 85% disability by examining P.W.2/Doctor. The appellant by examining P.W.4 proved that he could not do the earlier work of Driver as he was doing earlier. The Tribunal ought to have awarded compensation for 100% disability. The appellant was aged 54 years at the time of accident and the correct multiplier applicable is '11' but the Tribunal erroneously applied multiplier '8'. The Tribunal has not awarded any amount towards loss of amenities, pain and sufferings, future medical expenses, extra nourishment and transportation and prayed for enhancement of compensation.

11.Per contra, Mr.S.Arunkumar, learned counsel appearing for the 3rd respondent-Insurance Company contended that appellant has not proved that he suffered functional disability and lost his earning capacity. In the absence of any material evidence with regard to loss of income, the Tribunal erroneously applied multiplier method and awarded compensation excessively. The appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company Limited and perused the entire materials on record.

13.From the materials available on record, it is seen that it is the contention of the appellant that he suffered grievous injuries and suffered 85% partial permanent disability. To prove the same, he examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken. P.W.2/Doctor certified that



appellant suffered 85% partial permanent disability. The appellant also examined one Kumaran as P.W.4, who is working as Senior Assistant from Transport Corporation, Coimbatore Division to prove that appellant could not do the work of driver as he was doing earlier and appellant availed 30 days medical leave and thereafter leave on loss of pay. The Tribunal considering the evidence of P.W.2/Doctor and P.W.4/Senior Assistant, accepted the disability certificate and adopted multiplier method to award compensation for loss of income. P.W.4 deposed that appellant could not do the work as driver as he was doing earlier but he did not give any evidence that appellant was discharged or dismissed from service or he was not given any alternative employment. It is also not the case of the appellant that due to 85% of partial permanent disability, he lost his job and lost his entire income. On the other hand, in the grounds of appeal he has stated that he has lost his chance of getting promotion as Checking Inspector and periodical increment of salary. Considering the evidence of P.W.4 and failure on the part of the appellant to prove that he lost his job and entire income and in the absence of any evidence with regard to loss of earning capacity, the Tribunal erroneously adopted multiplier method for awarding compensation. The Tribunal has awarded excessive amount of Rs.11,77,814.40 towards loss of earning capacity. In view of the same, the appellant is not entitled to any enhancement under other heads.

14. In the result, the Civil Miscellaneous Appeal is dismissed and sum of Rs.14,11,000/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed. The 3rd respondent-Insurance Company is directed to deposit the amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.252 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur, at the first instance and recover the same from the 2nd respondent-owner of the van. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate Sr.36225

C.M.A.No.1644 of 2013

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