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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2835 of 2015

Chokkalingam

...Appellant/Claimant

versus

1.T.Ganesan
S/o.Thangaraj

2.United India Insurance Company Ltd.,
Drug Store Complex, Ground Floor,
72-C, Market Street, Ariyalur,
Ariyalur District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and award of the Motor Accidents Claims Tribunal (Sub-Court), Ariyalur in M.C.O.P.No.13 of 2009, dated 24.06.2013.

For Appellant : Mr.P.Parthikannan

For Respondents : Mr.K.Balu for R1

: Mr.J.Vijayaragahvan for R2

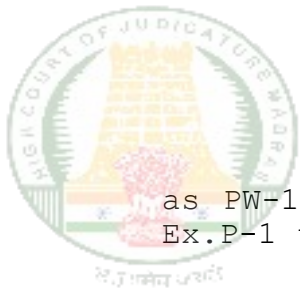
J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is filed by the claimant seeking for enhancement of compensation.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents.

3. The case of the claimant/appellant is that on 27.10.2008, while he was walking along T.Paloor to Jayamkondam main road, the rider of the motorcycle bearing registration No.TN 46H 4135 dashed against him and caused injury. He was taken to the hospital and treated for the injury as inpatient from 28.10.2008 to 15.11.2008. For the loss of income and other damages, a sum of Rs.3,00,000/- was sought as compensation.



4. Before the Tribunal, the claimant examined himself as PW-1 and two other witnesses were examined as PW-2 and PW-3. Ex.P-1 to Ex.P-3 were marked in support of the claim.

5. The claim petition was resisted by the respondents stating that the accident occurred due to negligence of the claimant, who after consuming alcohol in a drunken state suddenly crossed the road and invited the accident.

6. The Tribunal based on Ex.P-1-FIR registered against the rider of the two wheeler held that the accident caused due to negligence of the two wheeler driver. Hence fixed the compensation against the owner of the two wheeler and the Insurance Company under which the two wheeler was insured. Based on the medical report Ex.P-2 and Ex.P-3 issued by PW-3 Dr.Ramsamy, the Tribunal found that there is no certificate to prove disability. However taking note of the guidelines of the physically handicapped issued by the Government of India dated 06.08.1986 for cervical spine injury fixed 10% disability and awarded a sum of Rs.10,000/- for disability. Rs.5,000/- each for extra nourishment and pain and sufferings. Rs.3,000/- for Transport and Rs.4,500/- for loss of earning during the treatment period. Totally a sum of Rs.27,500/- was awarded with interest from the date of petition till the date of realisation.

7. In the appeal it is contended that the Tribunal ought to have taken note of the fact that the cervical spine injury caused due to accident, has impaired the quality of life and amenities of the claimant aged 55 years. Therefore, adequate compensation ought to have awarded, taking note of his injury and future prospects of income.

8. The learned counsel appearing for the respondents would state that the claimant who is the agriculturist has not suffered any loss of income either during treatment period and subsequently. He was treated in Government hospital for 19 days and got discharged after recovery. Therefore, the award passed by the Tribunal is fair and just.

9. On perusing the record and the evidence placed before the Court and after hearing the submissions of the respective counsels, this Court finds that the injury in cervical spine has been assessed at 10% disability. The Tribunal has awarded Rs.1,000/- per percentage of disability, since the accident in the year 2008. A sum of Rs.4,500/- awarded as compensation to the loss of income during the treatment period. On cumulative assessment, this Court is of the view that an addition of Rs.10,000/- under the head of disability and Rs.3,000/- for loss of amenities shall be awarded to the claimant over and above the award passed by the Tribunal.



10. Accordingly, the award of the Tribunal is modified from 27,500/- to Rs.40,500/- as compensation. The Insurance Company is directed to deposit the award amount Rs.40,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within 8 weeks from today. On such deposit, the claimant is permitted to withdraw the amount on filing appropriate petition. Since the rider of the offending vehicle had no driving license, the Tribunal has permitted the Insurance Company to "pay and recover", the said order is confirmed.

11. With the above modifications, the Civil Miscellaneous Appeal is Allowed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rpl
To

1.The Subordinate Judge
Motor Accidents Claims Tribunal,
Sub-Court, Ariyalur.

+1 CC to Mr.S. Kaithamalai Kumaran, Advocate sr 39099.

C.M.A.No.2835 of 2015

VGII(CO)
SP(31/08/2021)