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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3346 of 2012

K. Perumal

.. Petitioner/Appellant

Vs.

1.Mr. Benny Mathew

(R1 was set exparte in the trial Court)

2.Bajaj Allianz General Insurance Co. Ltd.

Prince Towers, No.25/26, College road,

Nungambakkam, Chennai -34

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2012 in MACT.O.P.No.3006 of 2009 on the file of the VI Judge, Motor Accidents Claims Tribunal/Small Causes Court, Chennai.

For Appellant : Mr.C.Munuswamy
For C & K Law Firm

For Respondent : Mr.K. Poomalai for R2
R1 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.03.2012 passed in MACT.O.P.No.3006 of 2009 on the file of the VI Judge, Motor Accidents Claims Tribunal/Small Causes Court, Chennai.

2. The appellant is the claimant and the first and second respondent are the owner and insurer of the alleged vehicle involved in the accident.

3. The case of the appellant is that on 20.08.2009 at 14:30 hours when the appellant/claimant was proceeding in his bullock cart along the Rajiv Gandhi Salai near Seevaram bus stop, a car bearing Reg.No.TN-07-BA-2631 came in a rash and negligent manner



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and dashed against the bullock cart, due to which the appellant/claimant sustained grievous injuries. The accident has occurred due to the rash and negligent driving of the car. Hence, the appellant filed a claim petition before the Tribunal claiming a sum of Rs.6,00,000/- as compensation.

4. Before the Tribunal, during trial, in order to prove his case, the appellant examined himself as P.W.1 and the Doctor who issued disability certificate was examined as P.W.2 and marked as many as six documents viz., Exs.P1 to P6. The respondents have neither let in any evidence nor marked any documents before the Tribunal.

5. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the car bearing Registration No.TN-07-BA-2631 belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the second respondent/Insurance Company to pay a sum of Rs.2,62,300/- as compensation to the appellant/claimant.

6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellant would contend that the Court below had awarded only a sum of Rs.2,62,300/- as compensation, without considering the injuries sustained by the appellant, as well as the Court below has not awarded any amount under the head loss of dependency, whereas the family members depend upon the income of the appellant. He also contended that even though the Doctor has assessed 60% as disability, the Tribunal has taken only 20% for calculating annual income.

8. The learned counsel for the appellant would further contend that due to the injuries sustained by the appellant in the accident, he is experiencing frequent headache, giddiness and loss of memory and his right side forehead disfigured and due to it he was not able to continue his work. Hence, prays for enhancement of compensation.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that amount awarded by the Tribunal under various heads are excessive and also denies all the averments in the claim petition. He would further contend that there was no valid insurance policy for the alleged vehicle involved in the accident and the Court below erred in fixing the liability on their part.



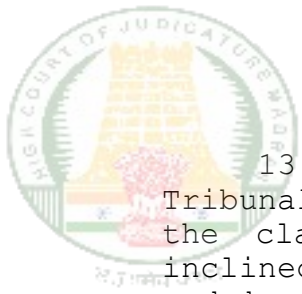
10. Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and also perused all the materials available on record.

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11. On a perusal of the record, with regard to the negligence aspect, i.e. Whether the accident has occurred due to the rash and negligent driving of the driver of the car or the negligence of the appellant was disputed before the Tribunal and it was proved that the accident had occurred only due to the negligence of the driver of the car. Therefore, the Tribunal arrived at a conclusion that the appellant/Insurance Company, who is the insurer of the car is liable to pay compensation, which is in accordance with law and there is no infirmity and the same is confirmed as such. There was no valid rebuttal evidence on the side of the respondents before the Tribunal to challenge their negligence aspect.

12. With regard to the quantum, it is seen in the claim petition it has been stated that due to the accident, the claimant sustained injuries and considering the said injuries as permanent disability, the Tribunal adopted multiplier method and arrived a sum of Rs.1,72,800/- towards Annual income. The amount arrived under other heads viz., Transportation and Extra nourishment are also very low. Hence, this Court is inclined to interfere with the said findings. The details of the compensation awarded by the Tribunal are as follows:

Heads	Amount awarded by the Tribunal
Annual Income	Rs.1,72,800/-
Loss of income for 3 months at the rate of Rs.4,500/- per month	Rs.13,500/-
Transportation	Rs.5,000/-
Extra Nourishment	Rs.5,000/-
Damage to clothes	Rs.1,000/-
Mental agony and loss of amenities of life	Rs.25,000/-
Pain and suffering	Rs.40,000/-
Total	Rs.2,62,300/-



13. In view of the above, this Court observes that the Tribunal erred in considering nature of injuries sustained by the claimant as permanent disability. Hence, this Court is inclined to fix monthly income of the claimant at Rs.4,500/- p.m and he himself had admitted in the claim petition that he had not gone for any job for 12 months, hence Rs.54,000/- (Rs.4,500x12) is being awarded under this head and with regard to disability Rs.2,000/- per percentage is taken and Rs.40,000/- (Rs.2,000x20%) is being awarded under the head of permanent disability. The amount awarded under the heads, Transportation and Extra nourishment are enhanced to Rs.10,000/- each from Rs.5,000/- each. With the above said modification the compensation amount of Rs.2,62,300/- awarded by the Tribunal is reduced to Rs.1,50,000/- under the following heads:-

Heads	Amount awarded by this Court
Loss of income	Rs.54,000
Disability	Rs.40,000/-
Transportation	Rs.10,000/-
Extra nourishment	Rs.10,000/-
Damage to clothes	Rs.1,000/-
Loss of amenities to life	Rs.10,000/-
Pain and sufferings	Rs.25,000/-
Total	Rs.1,50,000/-

14. In the result, the order of Tribunal in MACTOP No.3006 of 2009 is modified and this appeal is dismissed.

15. The Compensation amount of Rs.2,62,300/- is reduced to Rs.1,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The second respondent/Insurance Company is directed to deposit the reduced award amount as ordered by this Court after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar



To

1. The Motor Accidents Claims Tribunal/VI Judge,
Chennai.

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

+1cc to Mr.K. Poomalai, Advocate SR.No.3133

C.M.A.No.3346 of 2012

AD(CO)
GMY(01/07/2020)