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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3397 of 2014

P.Dhandapani (died)
2.Kandiyammal
3.Athikannan
4.Devi .. Appellants/LRs of the Sole Appellant
(Appellants 2 to 4 brought on record as LRS
of the deceased sole appellant viz.,
P.Dhandapani vide order of this Court dated
31.08.2020 made in C.M.P.No.4513 of 2020 in
C.M.A.No.3397 of 2014)

Vs.

1.S.Somasundaram
2.Sakthivel
3.Royal Sundaram Alliance
Insurance Company Limited,
Chennai Branch,
No.46, White Road,
Chennai - 600 014.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2005 made in M.C.O.P.No.208 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

For Appellants :	Mr.Gopalakrishnan Gopi for Mr.S.Gunalan
For R1 :	No appearance
For R3 :	Ms.C.Harini for Mr.N.Vijayaraghavan

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



10.02.2005 made in M.C.O.P.No.208 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

3.The first appellant is the claimant in M.C.O.P.No.208 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.03.2003.

4.According to the 1st appellant, on 06.03.2003 at about 06.45 P.M., while he was walking on the left side of Palani - Udumalpet road near Vayalur village bus stop towards Swaminathapuram, the 1st respondent who was riding the motorcycle bearing Registration No.TN 33 S 7481, rode the same in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident, the 1st appellant sustained grievous injuries all over his body. Immediately after the accident, he was admitted in Government Hospital, Udumalpet and thereafter he was referred to Government Hospital, Coimbatore. Therefore, the 1st appellant filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondents, being the rider, owner and insurer of the motorcycle respectively.

5.The 3rd respondent-Insurance Company filed counter statement and the same was adopted by the respondents 1 and 2. According to 3rd respondent, the 1st appellant has to prove that the 1st respondent-rider of the motorcycle belonging to 2nd respondent was possessing valid driving license and also the motorcycle belonging to 2nd respondent was insured with the 3rd respondent-Insurance Company at the time of accident. In the F.I.R., it was admitted that 1st appellant was residing at Kumarapalayam of Palani Taluk and hence, the place of accident will not come within the jurisdiction of the Tribunal. According to 3rd respondent, the 1st respondent rode the motorcycle at a moderate speed by following all the rules and regulations and the 1st appellant only suddenly crossed the road without seeing the motorcycle coming on the road. On seeing this, the 1st respondent turned the motorcycle towards left side. At that time, the 1st appellant turned to his back, came into contact with the motorcycle, fell down and sustained injuries. Hence, the accident has not occurred due to negligence on the part of the 1st respondent. The injuries sustained by the 1st appellant are only simple in nature. The 1st appellant has to prove his age, avocation, income, nature of injuries, disability suffered, medical expenses incurred and period of treatment taken by him by producing valid documents. In any event, the quantum of compensation claimed by the 1st appellant is highly excessive and prayed for dismissal of the claim petition.



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6. Before the Tribunal, the 1st appellant examined himself as P.W.1 and Dr. Gnanaprakash was examined as P.W.2 and 13 documents were marked as Exs. P1 to P13. The respondents did not let in any oral and documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 2nd respondent and directed the 3rd respondent-Insurance Company to pay a sum of Rs.40,000/- as compensation to the 1st appellant.

8. Not being satisfied with the amounts awarded by the Tribunal in the award dated 10.02.2005 made in M.C.O.P.No.208 of 2003, the 1st appellant has come out with the present appeal. Pending appeal, the 1st appellant died on 22.01.2020. Therefore, his legal heirs were impleaded as appellants 2 to 4 in the present appeal by the order of this Court dated 31.08.2020 made in C.M.P.No.4513 of 2020 in C.M.A.No.3397 of 2014.

9. The learned counsel appearing for the appellants contended that in the accident the 1st appellant sustained multiple grievous injuries all over the body and sustained grievous injuries and fractures in left leg and left arm. The 1st appellant has taken treatment in the Government Hospital as in-patient from 06.03.2003 to 17.03.2003. Further the appellant was admitted in Government Hospital as in-patient from 23.02.2004 to 16.03.2004 as his four fingers in his left hand was amputated and his left leg below knee was removed. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, attendant charges and transportation are meagre. The Tribunal ought to have awarded a sum of Rs.50,000/- each towards medical expenses and future medical expenses respectively. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the injured 1st appellant died and appellants 2 to 4, who are the legal heirs of the injured 1st appellant are not entitled to any enhancement for the injuries sustained by the 1st appellant and prayed for dismissal of the appeal.

11. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent-



Insurance Company and perused the entire materials available on record.

13. The 1st appellant, who filed the claim petition for the injuries sustained by him in the accident that took place on 06.03.2003, died pending appeal. Therefore, the appellants 2 to 4 have been impleaded as legal heirs of the deceased 1st appellant by the order of this Court dated 31.08.2020 made in C.M.P.No.4513 of 2020 in C.M.A.No.3397 of 2014.

14. From the materials available on record, it is seen that it is the contention of the 1st appellant that in the accident occurred on 06.03.2003, he sustained grievous injuries and fracture in the left leg and left arm. He has taken treatment as in-patient in Government Hospital from 06.03.2003 to 17.03.2003. According to learned counsel appearing for appellants, the 1st appellant was admitted in Government Hospital, Coimbatore and has taken treatment in Government Hospital, Coimbatore from 23.02.2004 to 16.03.2004 as in-patient. The left hand and left leg below knee of the 1st appellant were amputated. P.W.2/Doctor examined by the 1st appellant deposed that for the injuries sustained in the accident, the 1st appellant suffered fracture in the left hand and left leg. After the treatment, fractures were united and healed. P.W.2/Doctor further deposed that 1st appellant was admitted in the hospital in the year 2004 for his illness in the blood vessel and underwent surgery. P.W.2/Doctor also deposed that there is no nexus between the injuries sustained in the accident and disability. The Tribunal considering the evidence of P.W.2/Doctor who examined the 1st appellant, granted compensation of Rs.40,000/- for the injuries, pain and sufferings, attendant charges, extra nourishment and transportation. In view of the evidence of P.W.2/Doctor, the contention of the learned counsel appearing for the appellants that appellants are entitled to more compensation than awarded by the Tribunal is without merits. The compensation awarded by the Tribunal is hereby confirmed and there is no error in the said award warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.40,000/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the award amount 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.208 of 2003 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. On such deposit, the 2nd appellant is permitted to withdraw a sum of Rs.20,000/-



and the appellants 3 & 4 are entitled to a sum of Rs.10,000/- each as their respective share of the award amount, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Udumalpet

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

+lcc to Mr.S.Gunalan, Advocate, S.R.No.39049

C.M.A.No.3397 of 2014

RLD(CO)
CB(26/08/2021)