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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.3375 OF 2011

G.Raja Ganapathy

... Appellant/Petitioner

Versus

1. S.Balakrishnan
(R1 set exparte before trial court)

2. United India Insurance Co.Ltd.,
No.14, Whites Road,
Sudarsan Building, II Floor,
Chennai - 600 014.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 06.07.2011 made in MACT.OP.No.1381 of 2007 on the file of the VI Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.R.Kalai Arasan

For Respondents

For R2 : Mr.M.J.Vijayaraghavan

R1 : Exparte

J U D G M E N T

This appeal has been laid as against the judgment and decree dated 06.07.2011 made in MACT.OP.No.1381 of 2007 on the file of the VI Small Causes Court (Motor Accidents Claims Tribunal), Chennai thereby awarded the compensation to the tune of Rs.1,97,375/-.



2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 17.02.2007, when the petitioner was riding his motorcycle from Nungambakkam to Parrys, the car which was driven in a rash and negligent manner by the first respondent and dashed against the claimant, due to which he fell down and sustained head injuries, facial injuries, fracture right temporal bone, left frontal contusion brain and multiple injuries. Immediately, he was taken to Government Royapettah Hospital and thereafter referred to Government General Hospital, Chennai. He was admitted as inpatient from 17.02.2007 to 23.02.2007. Due to the said accident, he suffered loss of hearing power and he was fixed hearing aid. The disability caused to the petitioner in respect of 40% on his right ear and 20% on his left ear. In respect of head injuries are concerned, he sustained 40% partial and permanent disability, therefore, sustained 100% disability and he cannot work as Clerk. He was aged about 24 years at the time of accident and he was working as Clerk in a private transport company. Therefore, he claimed compensation at Rs.6,00,000/-.

4. Resisting the same, the second respondent filed counter stating that only on the rash and negligent driving of the petitioner's vehicle, the accident took place and as such the second respondent is not at all liable to pay any compensation. The disability assessed by the doctor is also very high and there is no permanent disability as stated by the petitioner.

5. On the side of the claimant, examined P.W.1 to P.W.3 and marked Ex.P1 to Ex.P7. On the side of the respondents neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.1,97,375/- as payable by the respondents. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant came forward with the present appeal.

6. The learned counsel appearing for the claimant submits that PW2 and 3 are the doctors who assessed disability were examined and assessed disability on the right ear of the petitioner at 40% and 20% on the left ear. Insofar head injuries are concerned, the petitioner was assessed 40% partial and permanent disability. The petitioner was working as Clerk and now could not able to work as Clerk. Therefore, there is earning loss and without considering the same, the Tribunal had taken into consideration only partial disability and awarded very less compensation.



7. Per contra, the learned counsel appearing for the second respondent would contend that it is a case of injury and the Tribunal rightly awarded a sum of Rs.1,97,375/- and as such the claimant is not at all entitled for any enhanced compensation.

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8. Heard Mr.R.Kalai Arasan, learned counsel appearing for the appellant and Mr.M.J.Vijayaraghavan, learned counsel appearing for the second respondent.

9. On 17.02.2007, when the petitioner was riding his motorcyle from Nungambakkam to Parrys, Chennai, the first respondent had driven his car in a rash and negligent manner behind the motorcycle and dashed against the motorcycle. Therefore, the petitioner fell down and sustained injuries on his head. The doctors who assessed the petitioner were examined as PW2 and 3. PW2 deposed that the disability caused to the petitioner regarding injuries sustained by him as 20% on his left ear, in respect of right ear, 40%. Therefore, the petitioner is suffering 60% partial and permanent disability. PW3 assessed the disability of the petitioner in respect of head injury at 40%. For post head injury and headache migraine, sinusitis, refractory error 10%, Post traumatic vertigo 10%, Anticonvulsant therapy 10% and facial LMN Paralysees 10% in total 40%, PW3 is not the doctor who treated the petitioner. Further, there is no evidence to the effect that the injuries sustained by the petitioner totally disabled him from doing his work as he did prior to the accident. Therefore, the Tribunal rightly awarded compensation for the injuries sustained by him at Rs.1,40,000/-.

10. Insofar as other heads are concerned, the Tribunal awarded a sum of Rs.7,000/- for his loss of earning for two months, Rs.5,000/- for transport expenses, Rs.5,000/- for extra nourishment, Rs.1,000/- for damages to clothes, Rs.1,371/- for his medical expenses, Rs.3,000/- attender charges and Rs.10,000/- for mental agony. Under the head of non-pecuniary loss, the Tribunal awarded a sum of Rs.25,000/- for pain and sufferings and Rs.1,40,000/- for disability sustained by him assessed on the injuries. Therefore this Court finds no infirmity or irregularity in the order passed by the Tribunal. As such, the Tribunal has rightly awarded compensation of Rs.1,97,375/-

11. Accordingly, this civil miscellaneous appeal is dismissed. No Costs. The respondents are directed to deposit the total compensation of Rs.1,97,375/- with accrued interest and costs as determined at by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the appellant/claimant is permitted to withdraw in



accordance with law, less the amount if any already withdrawn by them.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The VI Small Causes Court,
Chennai.

Copy To:

The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.23975

C.M.A.NO.3375 OF 2011

JP-II(CO)
PBS/08/10/2021