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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA. No.852 of 2011

Chinnappachetty ... Appellant/Petitioner

..Vs..

1. Raghupathy Gowda
2. United India Insurance Company Limited,
Rep by its Manager,
No.12/133/1 Jawali Street,
Palamaner Post, Chittoor District
Andhra Pradesh.
3. Chand Fzulal
4. Oriental Insurane Company Limited,
Rep by its Branch Manager,
No 15/442-1-1,
P.B.No 59, R.F.Road,
Ananthpur Post and District
Andhra Pradesh. ...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 06.12.2010 made in M.C.O.P.No.154 of 2006 on the file of The Principal Subordinate Judge (Motor Accidents Claims Tribunal), Krishnagiri.

For Appellant	: Mr. M.Sriram
For Respondent No.2	: Mr. C.Paranthaman
Respondent No.1 & 3	: Notice not yet served
Respondent No.4	: M/s. R.Sreevidhya

JUDGMENT

Dissatisfied with the judgment and decree, dated 06.12.2010, passed by the tribunal awarding compensation of Rs.58,550/- along with interest at the rate of 6% per annum, the claimant is before this Court for enhancement of compensation.



2. It is the case of the claimant/appellant herein that on 22.12.2004 at about 7.30 a.m, the claimant was traveling as a passenger in the bus bearing Reg.No. KA-07-5757 from Bairreddypalli to Punganoor in Chittoor District Andhra Pradesh, while proceeding near the Kothapalli cross road, the driver drove the bus in a rash and negligent manner and dashed against the tempo bearing no. AP-02-4589 which came in the opposite direction. Due to the accident, the appellant sustained grievous injury. The appellant filed a claim petition before the tribunal, claiming compensation of Rs.5,00,000/- for the injuries sustained by him due to the said accident.

3. Before the tribunal the claimant was examined as P.W.1 and the doctor T.V.Gandhi was examined as P.W.2 and marked documents Ex.A1 to A12. On the side of the respondents, no witnesses were examined and no documents were marked.

4. The Tribunal, based on the oral and documentary evidence, has held that the accident had occurred only due to the rash and negligent driving on the part of the 1st respondent vehicle and awarded compensation to the claimant Rs.58,550/- payable by the 1st and 2nd respondents along with interest at the rate of 6% p.a from the date of petition till realization.

5. The learned counsel for the appellant has submitted that the appellant sustained multiple grievous injuries and sustained 35% disability. The appellant also produced the Disability Certificate issued by P.W.2/Dr.T.V.Ganthi and marked the same as E.A11. The Tribunal ought to have adopted the multiplier method in calculating the loss of income and compensation to permanent disability, but erred in fixing Rs.1000/- per percentage and granted Rs.35,000/- towards permanent disability, which is very meagre. The tribunal has not fixed any compensation towards loss of amenities and any amount for mental shock and agony sustained by the appellant. Considering the nature of disability, the award passed by the tribunal at Rs.58,550/- under various heads are not adequate. Hence, he seeks for enhancement of compensation.

6. The learned counsel appearing for the respondent/Insurance Company objected for enhancement of compensation and justified the award passed by the tribunal is reasonable and fair and therefore, does not warrant interference by this Court.

7. Heard the learned counsel appearing for the claimant/appellant, the learned counsel appearing for the respondents 2 & 4 /Insurance Company and perused the materials available on record.



8. It reveals from the record that Ex.A1/FIR was registered against the driver of the bus bearing Reg.No. KA-07-5757, it is clearly stated that the driver of the said bus was at fault. There is no contra evidence on the side of the respondent to disprove the negligence. In the absence, for the same, the tribunal based on the evidence of PW1 and Ex.A1/FIR and Ex.A2/wound certificate, has come to the conclusion that the driver of the 1st respondent bus was solely responsible for the accident and the insurance policy was not in existence with the 2nd respondent/insurance company, hence the tribunal has directed the 2nd respondent /insurance company is liable to pay the compensation. The tribunal has also held that the respondents 3 & 4 are no way responsible for the accident. This Court finds no error on the said decision of the tribunal, accordingly, this Court confirms the negligence and liability fixed by the tribunal.

9. As far as quantum of compensation is concerned, the claimant was aged 61 years at the time of the accident, the tribunal has accepted the disability assessed by the doctor at 35% and fixed Rs.1000 per percentage and awarded Rs.35,000/- towards permanent disability. Considering the evidence of PW2/Doctor who deposed that due to the injuries sustained by him in the said accident, the claimant could not work hard as before the accident, hence he assessed 35%. In view of evidence of the PW2/doctor and the age of the deceased, this Court is inclined to fix Rs.1200/-per percentage and calculated the compensation for permanent disability for 35% at Rs.42,000/-.

10. Considering the nature of injuries and permanent disability, the compensation awarded by the tribunal under other heads are also requires modification. Accordingly, the sum awarded under single head 'Transport to hospital and extra nourishment' at Rs.5000/- is set aside and granted a sum of Rs.5000/- each under the heads 'Transport to hospital' and 'Extra nourishment' separately. The sum awarded under the head 'pain and suffering' at Rs. 5000/- is enhanced to Rs.10,000/-. The sum awarded at Rs.2000/- toward Medical Assistance is set aside and a sum of Rs.4,000/- is granted under the head 'Attendant charges'. The tribunal, as per Ex.A10/Medical Bills has awarded a sum of Rs.5,533/- towards Medial expenses, the same is confirmed. Likewise, the compensation awarded at Rs.6,000/- under the head 'partial loss of earning' is also confirmed. The tribunal has not awarded compensation for 'loss of amenity', hence it would be proper to award Rs.6000/- under the head 'Loss of Amenities.' Thus the award of the tribunal is modified by this Court as follows:



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Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Permanent disability	35,000/-	42,000 (35 x 1200)
Transport to hospital and Extra Nourishment	5,000/-	...
Transport to Hospital	..	5,000
Extra Nourishment	...	5,000
Pain and suffering	5,000/-	10,000
Medical Assistance	2,000/-	..
Attendant Charges	..	4,000
Partial loss of earning	6,000/-	6,000
Medical Expenses	5,533/-	5,533
Loss of amenities	..	6,000
Total :	58,533/-	83,533 (rounded of to Rs.83,500/-)

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at sum of Rs. 58,533/- is enhanced to Rs. 83,500/-. The rate of interest fixed by the at 6% per annum is set aside. The appellant/claimant is entitled with the rate of interest at 7.5% per annum for the entire compensation amount.

12. The 1st & 2nd respondents are directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation as modified by this Court along 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 Principal Subordinate Judge
(Motor Accidents Claims Tribunal),
Krishnagiri.

Copy to:

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

+1cc to Mr.C.Paranthaman, Advocate Sr No.10810

+1cc to Mr.Mukund R.Pandiyan, Advocate Sr No.10778

CMA.No.852 of 2011

SRA (CO)
PR (29/10/2021)