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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.2882 of 2013

T.S.Pradeep

... Appellant/Petitioner

..Vs..

1.The Managing Director,
M/s.K.P.N.Travels India Ltd.,
Kalaripalayam,
Bangalore-2

2.The National Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.751, Mount road (Opp. TVS),
III Floor, Chennai-600002.

3.A.Jaya,
W/o K.Arumugam,

4.The New India Assurance Co. Ltd.,
Motor Third Party Claim Cell,
Moore Street,
Chennai.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 05.10.2012 made in M.C.O.P.No.4680 of 2004 on the file of the III Court of Small Causes (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.N.Manokaran

For Respondent No.2 & 4 : Mr. N.B.Surekha

Respondent No.1 & 3 : Notice served

JUDGMENT

Dissatisfied with the judgment and decree, dated 05.10.2012, passed by the tribunal awarding compensation of Rs.1,30,000/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.



2. It is the case of the claimant/appellant herein that on 23.06.2004 at about 6.00 a.m, the appellant was traveling on the Chennai - Bangalore highway in a Bus bearing no. KA-38-A-0001 from Bangalore to Chennai, when the Bus was proceeding near Sriperumbudur at Pennalur Power Grid, the driver of the bus drove the same in a rash and negligent manner at a high speed and collided with a lorry bearing Reg.No. MDA-6069 coming in the opposite direction towards vellore. Both the Bus and the lorry were traveling at a high speed in a rash and negligent manner caused the accident, thereby causing grievous injury to the appellant. The appellant filed a claim petition before the tribunal, claiming compensation of Rs.4,00,000/- .

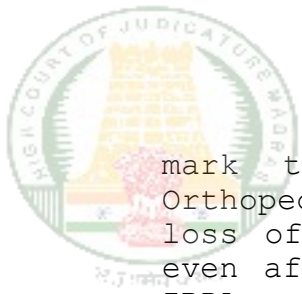
3. Before the tribunal, on the side of the claimant, P.W.3, the Petitioner was examined and Ex.P11 to P17 were marked. On the side of the respondents, no witnesses were examined and no documents were marked and no material object were placed on record.

4.The Tribunal, based on the oral and documentary evidence, has held that due to the rash and negligence on the part of the driver of bus bearing no. KA-38-A-0001, the accident had occurred and directed the 2nd respondent/insurance company to pay the compensation on behalf of the 1st respondent. The tribunal has awarded Rs.1,30,000/- under various heads along with interest at the rate of 7.5% p.a from the date of petition till realization.

Heads	Amount in Rs.
Loss of income for 3 months	22,500/-
Transportation	3,000/-
Extra Nourishment	3,000/-
Damage to Clothes	500/-
Medical Expenses	91,000/-
Pain and suffering	10,000/-
Total :	1,30,000/-

5. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent/Insurance Company and perused the materials available on record.

6. The learned counsel for the appellant has submitted that due to rash and negligent driving of the offending vehicle, the appellant sustained grievous injuries and the anterior dislocation of left hip and therefore the appellant sustained 30% disability. The appellant was not given an opportunity to



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mark the disability certificate issued by the Government Orthopedic surgeon, Royapettah. The Tribunal has failed to award loss of earning capacity and loss of percentage of disability, even after proved through the Ex.P16 the license issued by the IRDA and Ex.P17 Identity card issued by the Avita Life Insurance Company before the tribunal. However, tribunal has awarded a meagre amount of Rs.1,30,000/- along with interest at the rate of 7.5% p.a. According to the appellant, tribunal failed to appreciate the case of the appellant that he suffered 30% disability. According to him, tribunal has not fixed any compensation towards disability sustained by the appellant. Considering the nature of disability, award passed by the tribunal under other heads are also not adequate. Therefore, seeks enhancement of compensation.

7. The learned counsel appearing for the 2nd & 4th respondents/Insurance Company objected for enhancement of compensation and submitted that the appellant failed to produce the disability certificate to substantiate his claim. Therefore, the award passed by the tribunal is reasonable and fair and does not warrant any interference by this Court.

8. Undisputedly, the appellant/claimant in his claim petition has stated that he suffered 30% disability due to the accident and no documents were filed before the tribunal to prove his disability. The tribunal based on the documents and evidence available on record, has concluded that the claimant/appellant herein is entitled for compensation of Rs.1,30,000/- . The tribunal has also observed in the award that as per Ex.P14/Discharge Summary issued by The Bes Hospital Private Limited, the claimant/appellant herein took treatment as inpatient for a period of six days from 23.06.2004 to 28.06.2004 for the Anterior dislocation of left hip. But the tribunal has not awarded any amount specifically for the injuries.

9. It is contended by the learned counsel for the respondents 2 & 4 /Insurance Company that in the absence of disability certificate from the doctor, the tribunal cannot award any amount under specific head. This Court finds some force on the contention of the learned counsel for the respondents 2 & 4 /Insurance Company. The learned counsel for the respondents 2 & 4 /Insurance Company has not disputed the fact that in the said accident several passengers along with the appellant herein were sustained injuries and they were also granted compensation by the tribunal.

10. Considering the injuries sustained by the appellant and the observation made by the tribunal in the award that the claimant has taken treatment as inpatient for the injuries sustained by him in the said accident, this Court finds it



proper to grant some reasonable amount for the injuries sustained by the appellant even in the absence of documents to prove his disability. Accordingly, a consolidated amount of Rs.10,000/- is granted under the head injuries sustained by the appellant. Insofar as the compensation awarded by the tribunal under various heads remains unaltered.

11. In view of the aforesaid discussion, the compensation awarded by the tribunal at sum of Rs. 1,30,000/- is enhanced to Rs.1,40,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. The 2nd respondent/Insurance Company is 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.

13. In fine, this Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
The III Judge,
Court of Small Causes
Chennai.

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.11024
+1cc to Mr.N.B.Surekha, Advocate, S.R.No.10976

CMA.No.2882 of 2013

AD(CO)
CB(20/09/2021)