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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1774 of 2021

Karthikeyan

.. Appellant/Petitioner

..Vs..

1.P.Gopal

(Notice for R1 may be dispensed with for the time being and separate petition filed for the same)

2.National Insurance Company Limited,
Rep. by its Manager, 73, Perundurai Road,
Near Collector Office, P.B.No.911,
Erode - 638 011.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.12.2018 made in M.C.O.P.No.152 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

For Appellant : Mr.C.Kulanthaivel
For R2 : Mr.V.Murali
for Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.With the consent of both the parties, this appeal is taken up for final hearing at the admission stage itself.

3.This Civil Miscellaneous Appeal has been filed against the award dated 10.12.2018 made in M.C.O.P.No.152 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District.



4.The appellant is the claimant in M.C.O.P.No.152 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.01.2016.

5.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 the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.2,26,718/- as compensation to the appellant at the first instance and recover the same from the 1st respondent/owner of the motorcycle.

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

7.The learned counsel appearing for the appellant contended that at the time of accident, the appellant was aged 27 years and was earning a sum of Rs.10,000/- per month by working as driver. In the accident, the appellant suffered multiple injuries and fracture. The Medical Board examined the appellant and certified that appellant suffered 22.5% disability. P.W.2/Doctor who treated the appellant has corroborated the functional disability assessed by the Medical Board. The appellant could not able to do his work as he was doing earlier, due to the injuries sustained by him in the accident. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced any document to prove that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the Tribunal applied percentage method and awarded compensation. The Tribunal after considering all the materials available on record in proper perspective, has awarded compensation, which is not excessive and prayed for dismissal of the appeal.

9.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.



10. From the materials available on record, it is seen that it is the contention of the appellant that at the time of accident, he was aged 27 years and was earning a sum of Rs.10,000/- per month by working as a driver. To substantiate the said contention, the appellant has not filed any document to prove the avocation, income and age. In the accident, the appellant suffered injuries and fracture and was referred to Medical Board. The Medical Board examined the appellant and certified that appellant suffered 22.5% disability and issued Ex.C1/disability certificate to that effect. The Tribunal has accepted the same and awarded a sum of Rs.67,500/- towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2016. The amount granted by the Tribunal for 22.5% disability is not meagre. The appellant has not proved that he suffered functional disability and lost his earning capacity and he cannot do any work. There is no material to show that the appellant suffered functional disability and lost his earning capacity. In view of the same, he is not entitled to any amount towards disability by adopting multiplier method. Considering the nature of injuries, period of treatment taken and the nature of work done by the appellant, the amounts awarded by the Tribunal under all other heads are not meagre and hence, they are confirmed. There is no reason to interfere with the award passed by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.2,26,718/- 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 2nd respondent/Insurance Company is directed to deposit the award amount along with interest and costs, at first instance and then recover the same from the 1st respondent/owner of the vehicle, 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.152 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Deputy Registrar (TNMCC)

//True Copy//

Sub Assistant Registrar

mtl



To

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Bhavani, Erode District.

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+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.30186

+1cc to Mr.J.Chandran, Advocate, S.R.No.30069

C.M.A.No.1774 of 2021

NK(CO)

CS/26/10/2021