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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.1687 OF 2018

Meganathan

...Appellant / Petitioner

Versus

1.Pradeep Kumar Mohata,

2.Royal Sundaram Alliance Insurance Company Limited,
No.1, Club House Road, Anna Salai,
Chennai.

...Respondents / Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 20.12.2016 made in MCOP No.2579 of 2013 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellant	:	Mr.K.Varadha Kamaraj
For R1	:	No Appearance
For R2	:	Mr.M.B. Raghavan

JUDGMENT

The appellant challenges the award dated 20.12.2016 passed by the Motor Accident Claims Tribunal, IIII Small Causes Court, Chennai, in MCOP No.2579 of 2013.

2. The claimant has come up with this appeal seeking enhancement of compensation. This is a case of injury. According to the claimant, on 06.03.2013 at 13.30 hours, he was riding his motorcycle bearing Reg.No.TN-05-P-9912 in which is wife Mrs. Manomaniam was riding pillion. When the two wheeler was proceeding in front of the office of the Fisheries Department, East Coast Road, the first respondent, drove the car bearing Reg.No.TN-04-AD-0246 in a rash and negligent manner and dashed against the petitioner's motorcycle. In the impact, the claimant and his wife sustained grievous injuries. Therefore, for the injuries sustained in the accident, he claimed a sum of Rs.5,00,000/- as compensation. However, the Tribunal awarded Rs.2,70,200/- together with interest at 7.5% per annum, under the following heads:-



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Heads	Rs.
Loss of income	26,500/-
Attender Charges	4,000/-
Transport to Hospital	5,000/-
Extra Nourishment	10,000/-
Damage to Clothing	1,000/-
Medical Bills	88,615/-
Pain and Suffering	20,000/-
Mental and Physical Shock	10,000/-
Loss of Amenities	15,000/-
Disability 30% @ Rs.3,000/-	90,000/-
Total	2,70,115/- rounded of 2,70,200/-

3. The learned counsel appearing for the appellant would contend that the amount awarded by the Tribunal is very meager in all the heads. He would further contend that at the time of accident, the injured was 54 years and hale and healthy. He was the sole breadwinner of his family. He would further contend that the tribunal has wrongly reduced the disability from 55% to 40% without any rhyme or reason. The Tribunal did not consider that the claimant had incurred enormous medical expenses and due to the injuries, he could not normally sit, stand or walk for a considerable duration. Thus, according to the counsel for the appellant, the injuries the claimant had sustained had dented his ability to earn which could be evident from the disability issued by the competent Medical Board at 55%. However, the Tribunal has not taken note of the age, loss of income suffered, period of treatment etc., and awarded compensation which is disproportionate to the nature of injuries sustained by him. Therefore, the learned counsel for the claimant prayed for enhancement of compensation.

4. On the above contentions, this court heard the learned counsel for the insurance company, who prayed for dismissal of the appeal inasmuch as the amount of compensation awarded by the Tribunal does not warrant enhancement and it falls within the 'fair and reasonable' theory enunciated by this Court as well as the Honourable Supreme Court in catena of decisions.

5. This Court carefully considered the submission of the learned counsel appearing for both sides and perused the materials available on record.



6. It is not in dispute that the claimant suffered injuries in a road accident that had taken place on 06.03.2013. For the injuries sustained by him, he has filed the instant claim petition and his wife also filed a separate claim petition for the injuries she suffered. In both the claim petitions, common evidence was adduced and the Tribunal passed the common award in both the claim petition filed by the appellant and his wife.

7. The finding of the Tribunal that the accident occurred due to the negligence of the driver of the Car has become final and hence, it need not be adverted to in the appeal.

8. Though the learned counsel appearing for the appellant/claimant has contended that the award is meager and sought enhancement, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence of PW1 to PW4 and Ex.P1 to P7 acquittance register, has fixed the monthly income, adopted correct multiplier and awarded a just and reasonable compensation. In fact, the Tribunal noted that PW2, Doctor, is not the one who has given treatment to the claimant. Further, it was noticed that the Disability Certificate was given three years after the accident. The Tribunal has also recorded a finding on the basis of the deposition of the Doctor that the injuries sustained by the claimant are not such that it would deprive his earning capacity. Though the Tribunal has taken 40% disability instead of 55% by giving proper reason, mistakenly taken only 30% and awarded Rs.90,000/- by taking Rs.3,000/- per percentage which has to be modified by taking 40% disability which awarded to Rs.1,20,000/- (40x Rs.3000) instead of Rs.90,000/-

9. Further, the claimant has not produced any documents to prove his income, but merely asserted that he is engaged in real estate business and earning Rs.15,000/- per month. However, the Tribunal fixed a sum of Rs.7,500/- as monthly income. As the appellant/claimant was 54 years old at the time of accident, a sum of Rs.26,500/- was awarded towards loss of income for 106 days at the rate of Rs.250/- per day. This methodology adopted by the Tribunal, in the opinion of this Court, is wholly justified and legally sustainable.

10. The Tribunal, taking into account the totality of the facts and circumstances, has awarded compensation under the head of Attender charges, Transportation to hospital, extra nourishment, damage to clothing, pain and suffering etc., The amount awarded under these heads are fair and reasonable and they do not warrant interference, except the modification with regard to the award towards disability which is calculated fixing Rs.3,000/- per percentage for 40% disability which comes



to Rs.1,20,000/- instead of Rs.9,000/- awarded by the Tribunal and it is liable only to be dismissed.

11. In the result, the decree and judgment dated 20.12.2016 made in MCOP No.2579 of 2013 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai are confirmed. The Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

msm

To

1.The Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.No.67840

C.M.A.No.1687 of 2018

AD(CO)
RVM(22/06/2022)