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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

C.M.A.No.623 of 2013

K.Munivel @ Velu

... Appellant/Petitioner

..vs..

1.M/s.Associate Transport,
No.269, Waltax Road, Chennai - 600 003.

2.The New India Assurance Company Ltd.,
No.46, Moore Street, Chennai - 1.

[The 1st respondent exparte in lower court]

... Respondents/Respondents

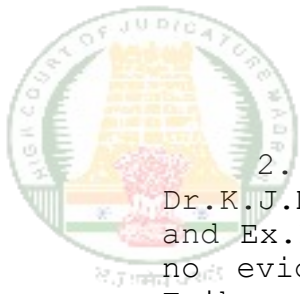
PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to allow the Claim in M.C.O.P.No.2699 of 2006 dated 19.03.2010 on the file of the Motor Accident Claims Tribunal, (V Court of Small Causes), Chennai, as prayed for with interest and cost.

For Appellant : Mr.Chidambaram
for Mr.V.Mohan Choudary

For Respondents : Ms.Salomi
for Mr.C.Ramesh Babu for R2
R1- Notice unserved

J U D G M E N T

The appellant has driven the TVS-50 Motorcycle bearing Reg.No.TN-04-S-7292 from West to East direction at Manali Express Road on 03.05.2006 at about 13.30 hours, a lorry bearing Reg.No.MDE-9933 came on the opposite direction in a rash and negligent manner and hit against the petitioner's vehicle, due to which the petitioner had sustained grievous injuries. In the said accident, the petitioner had sustained 25% disability and he had claimed Rs.3,50,000/- for the injuries sustained by him in the said road accident.



2. Before the Tribunal, the petitioner and one Dr.K.J.Mathiazhagan were examined on the side of the petitioner and Ex.P1 to Ex.P9 were marked. On the side of the respondents, no evidence or documents were marked. Based on which, the Tribunal without appreciating the oral and documentary evidence produced by the petitioner/ appellant has awarded a meager amount of Rs.85,000/-. As against the said award the petitioner has filed the present appeal.

3. The learned counsel for the appellant would submit that the Tribunal has not considered the evidence of PW2 - Dr.K.J.Mathiazhagan, who deposed before the Tribunal that the appellant had sustained 25% permanent disability due to the accident. He would further submit that due to the accident the appellant has sustained head grievous injuries; skull fracture; Acute SDH in Left fronto; Moderate contusion and Multiple contusion and he was treated as in-patient for 16 days in hospital. Therefore, the percentage of disability assessed by the Doctor at 25% is perfectly right. The Tribunal without any basis had reduced the permanent disability to 20%. Therefore, the percentage of disability has to be fixed as assessed by the Dr.K.J.Mathiazhagan, PW2. He would also submit that under other heads also, the Tribunal has awarded meager amounts and no amount was awarded under the head of loss of amenities, hence, he seeks for enhancement of the compensation amount awarded by the Tribunal.

4. The learned counsel appearing for the respondent/ Insurance Company would submit that the Tribunal has rightly come to a conclusion and awarded a sum of Rs.80,000/- for permanent disability. Based on the evidence of Dr.K.J.Mathiazhagan, PW2, the Tribunal has fixed the permanent disability as 20%. As far as the other heads are concerned, the Tribunal has rightly fixed the compensation. Therefore, the appeal is liable to be dismissed.

5. Considered the rival submissions of the parties and perused the materials on record.

6. The Ex.P8 disability certificate was issued by Dr.K.J.Mathiazhagan, who was examined as PW2. PW2, the Doctor who has given treatment to the appellant in his evidence had stated that the petitioner had suffered partial permanent disability and he assessed 25% as disability caused due to the accident. But, the Tribunal has fixed only 20% as permanent disability. The said assessment of the Tribunal is without any basis, therefore, this court accepts the said assessment of PW2 and fix the percentage of permanent disability as 25% sustained by the appellant in the said accident.



7. As far as the loss of earning is concerned, the Tribunal has awarded a sum of Rs.18,000/-. The appellant was admitted in the Hospital as in-patient from 03.05.2006 to 18.05.2006. At the time of the accident, the petitioner was a Cleaner - cum - Coolie and he was earning Rs.200/- per day. In support of the said claim, the appellant has not produced any documentary evidence viz., income proof before the Tribunal. Therefore, the Tribunal has rightly come to a conclusion and fixed a sum of Rs.3,000/- per month as his income and for such an earning capacity of the appellant, the Tribunal has fixed loss of earning for 6 months and awarded a sum of Rs.18,000/- (3000x6) under this head. The said amount awarded by the Tribunal is reasonable and there is no need for interference with the award under that head.

8. Under the head of medical expenses, the petitioner has claimed a sum of Rs.10,000/-. But, no medical bills or prescription filed to that extent. The Tribunal has admitted that the appellant had sustained injury during the said accident, but due to the reason that no medical bills was produced, the Tribunal has rejected the claim under the head of medical expenses. This court is of the view that the same requires modification and the appellant is entitled to Rs.10,000/- as medical expenses. The Tribunal has not awarded any amount towards loss of amenities and attendant charges. Considering the fact that the appellant had suffered 25% disability, this court awards an amount of Rs.10,000/- towards loss of amenities. The appellant was admitted in the Hospital as in-patient from 03.05.2006 to 18.05.2006, considering the period of hospitalization, this court awards an amount of Rs.5,000/- towards attendant charges. While considering the other heads, the Tribunal has not awarded adequate amounts to the appellant. Therefore, this court has enhanced the compensation amount under the heads as follows:-

Heads	Amount awarded by the Tribunal	Enhanced compensation
Permanent disability	Rs. 40,000/- (2000 x 20%)	Rs. 50,000/- (2000 x 25%)
Loss of earning	Rs. 18,000/-	Rs. 18,000/-
Transportation	Rs. 3,000/-	Rs. 3,000/-
Extra Nourishment	Rs. 4,000/-	Rs. 5,000/-
Medical Expenses	-	Rs. 10,000/-
Pain and sufferings	Rs. 20,000/-	Rs. 20,000/-



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Heads	Amount awarded by the Tribunal	Enhanced compensation
Loss of amenities	-	Rs. 10,000/-
Attendant Charges	-	Rs. 5,000/-
Total	Rs. 85,000/-	Rs.1,21,000/-

9. Thus, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation amount from Rs.85,000/- to Rs.1,21,000/- (Rupees One lakh twenty one thousand only) with interest @ 7.5% per annum from the date of claim petition till the date of payment. The second respondent/ Insurance Company is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant is permitted to withdraw the award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. The appellant/ claimant is directed to pay necessary court fee, if any, on the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The V Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.C.Ramesh Babu, Advocate Sr.5337
+2cc to M/s.V.Mohan Choudary, Advocate Sr.5262

CMA.No.623 of 2013

kk[co]
srg 24/09/2021