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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.01.2021

Pronounced on :19.01.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.747 of 2017

Prabhakaran ...Appellant /Claimant

/versus/

1.R.Subramaniyan
(R1 remained exparte before the
Tribunal hence his presence may be
dispensed with)
2.National Insurance Co.Ltd.,
No.751, Annasalai,
Chennai-2.

...Respondents /Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.01.2016 and made in M.A.C.T.O.P.No.616 of 2003 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant :Mrs.A.Subadra

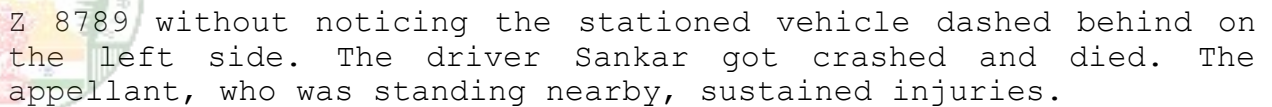
For Respondents:Mrs.N.B.Surekha for R2
R1-Exparte

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the accident victim seeking enhancement of compensation.

2.As per the First Information Report given by the appellant to the D-6, Maraimalainagar Police, On 08/12/2002 the appellant as cleaner of the lorry bearing registration No.TNI 1339 while proceeding towards Pattukottai at about 4.30 a.m., opposite to SRM College, Potheri, the lorry broke-down. The driver of the lorry Sankar went under the lorry and attending to repair. At that time, the driver of the lorry bearing registration No.TN-27



3. The appellant was admitted in the Chengalpeta Medical College Hospital on 08/12/2002 and discharged on 10/12/2002 after treatment for his injuries. He was advised absolute bed rest at home and to attend Ortho OP. Seeking compensation of Rs.4,00,000/-, claim petition was preferred before the Motor Accident Claims Tribunal, Chennai by the appellant against the owner of the offending vehicle and its insurer. The owner of the vehicle remained exparte.

5. In support of the claim petition, the appellant and Dr. Thiagarajan were examined as PW-1 and PW-2. Five documents were marked as Ex.P-1 to Ex.P-5. PW-2-Dr. Thiagarajan on examining the X-Ray and discharge summary opined that the injury has caused 45% disability to the claimant. The Tribunal on considering the evidence, held that the discharge summary Ex.P-2 indicates that the claimant had suffered compression of L-1, without neurological deficiency. The Doctor, while discharging had advised complete bed rest. The claimant had not suffered any permanent disability due to the injury. For the temporary disability and loss of income during the bed rest period of two months total compensation of Rs.37,500/- was awarded inclusive of compensation for pain and suffering, transport, medical expenses, nourishment, and loss of amenities.

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capacity of the claimant. The compensation awarded under the other heads is also not adequate and fair.

7.The learned counsel for the insurance company/2nd respondent submitted that the disability certificate was given by the Doctor on 08/03/2011 after 9 years from the date of accident. The discharge summary issued on 10/12/2002 after three days inpatient treatment only advise bed rest and no further medical treatment. Therefore, the Tribunal taking into consideration of the loss of income for the rest period and the pain and suffering had awarded fair compensation.

8.Heard both side. Records perused.

9.The disability certificate given by PW-2, who clinically examined the appellant after 9 years cannot be considered to be relevant, when the discharge summary which is contemporaneous document had recorded that the patient lower limb muscle power - normal, Sensation - normal, advised to take absolute bed rest, pillow reduction and L-1 compression without neurological deficiency.

10.The Tribunal after taking into consideration had awarded a sum of Rs.37,500 with 7.5% interest under the following heads:-

Sl. No.	Particulars	Amount awarded by the Tribunal (Rs.)
1.	Pain and Sufferings	20,000-00
2.	Attender charges (3days in the years 2002)	1,500-00
3.	Transport and Extra Nourishment and medical expenses	5,000-00
4.	Towards loss of amenities (2 months)	5,000-00
5.	Loss of Income (2 months in the year 2002)	6,000-00
Total		37,500-00



11. Taking note of the fact that the claim petition was dismissed for default and later restored on file, the interest for the default period was excluded. On examination of the evidence and the reasoning given by the Tribunal for fixation of compensation, this Court finds no ground to interfere with the award passed by the Tribunal.

12. As a result, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.B.Surekha, Advocate Sr.3326
+1cc to Mrs.M.Malar, Advocate Sr.2721

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ln[co]
srg 31/08/2021