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C.M.A.(MD)No.825 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.04.2021

Delivered On : 24.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.825 of 2015

Manidurai ..Appellant/Petitioner

Vs.

1.Vijaya Rengan

2.Universal Sompo General Insurance Company Ltd.,

Through its Branch Manager,

No.Unit 401, 4th Floor,

Sargam Complex,

No.127, Andheri Kurla Road,

Andheri (East),

Mumbai- 400 059.

.. Respondents/Respondents

(Memo in USR No.4536 dated 06.10.2017

is recorded as R1 is given up vide Court order

dated 25.01.2021 made in C.M.A. (MD)No.825/2015)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.343 of 2012, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Tribunal, Tirunelveli dated 02.06.2014.

For Appellant : Mr.T.Selvakumaran

For 1st Respondent : Dispensed with

For 2nd Respondent : Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.343 of 2012 dated 02.06.2014, on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tirunelveli.

2.The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.343 of 2012, claiming compensation for the injuries sustained by the claimant in an accident that took place on 05.06.2012. The Tribunal has awarded a sum of Rs.1,53,500/- (Rupees One Lakh Fifty Three Thousand and Five



Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.343 of 2012 is as follows:

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The claimant was aged about 30 years and was earning Rs.10,000/- (Rupees Ten Thousand only) per month. On 05.06.2012, at about 03.00 p.m., when the claimant was riding his two wheeler TVS XL bearing Registration No.TN-72-AC-8152, along Tirunelveli to Sankarankovil main road, near Kannarpatti vilaku, a Tavera car bearing registration No.TN-67-AV-1305 was driven by its driver in a rash and negligent manner coming from the opposite direction dashed against the claimant. The claimant sustained injuries. He was taken to Tirunelveli Government Hospital and he took treatment from 05.06.2012 till 10.06.2012 as 'in-patient'. The claimant was entitled for compensation of Rs.28,10,000/- but he restricted his claim to Rs.7,00,000/-.

4.The brief substance of the counter filed by the second respondent is as follows:

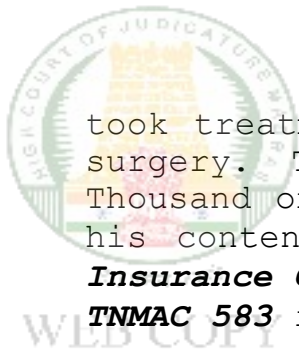
The driver of the first respondent is not liable for the accident. The accident took place only due to the negligence of the claimant. The age, occupation, income and mode of accident are to be proved by the claimant. The claimant has to prove the nature of injury, mode of treatment and the disability, if any.

5.After trial, the Tribunal has awarded a sum of Rs.1,53,500/- (Rupees One Lakh Fifty Three Thousand and Five Hundred only) as compensation to be paid by the second respondent. Against which, the appellant/claimant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the monthly income of the appellant is Rs.10,000/- (Rupees Ten Thousand only) and that multiplier '17' has to be applied. The award amount under various heads such as transport expenses, extra nourishment, attendant charges, loss of amenities and pain and suffering has to be enhanced.

7.On the side of the appellant, it is stated that the Hon'ble Apex Court has awarded a sum of Rs.2,96,920/- (Rupees Two Lakhs Ninety Six Thousand Nine Hundred and Twenty only) in a similar case of **Rudra v. National Insurance Co. Ltd.**, reported in **2011 (1) TNMAC 537**.

8.On the side of the appellant, it is stated that the disability for the appellant is 56%. Without considering the nature of injury, the Tribunal has awarded lesser amount. The appellant



took treatment as 'in-patient' for ten days and he has undergone a surgery. The injured is entitled for Rs.3,000/- (Rupees Three Thousand only) for each percentage of the disability. In support of his contention, a judgment of this Court in the case of **National Insurance Company Ltd., v. G.Ramesh and another** reported in **2013 (3) TNMAC 583** is cited.

9.On the side of the second respondent, it is stated that the disability is only partial permanent disability. It is not functional disability. Only when the total disability affect his functioning, the claimant is entitled for compensation by applying multiplier method. P.W.2 was not a doctor, who gave treatment to the claimant. The claimant was admitted only in the Government hospital and that there was no chance for the medical expenses. No proof was filed to show that the claimant was working as a Mason and he was getting a salary of Rs.10,000/- (Rupees Ten Thousand only) at that time. No proof for transport expenses and extra nourishment charges were filed by the claimant. In support of his contention, a judgment passed by the Hon'ble Supreme Court in the case of **Rajkumar v. Ajaykumar** reported in **2011 ACJ 1** is cited.

10.The Tribunal has fixed the monthly income as Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and has awarded a compensation for loss of income during the period of treatment as Rs.3,500/- (Rupees Three Thousand and Five Hundred only).

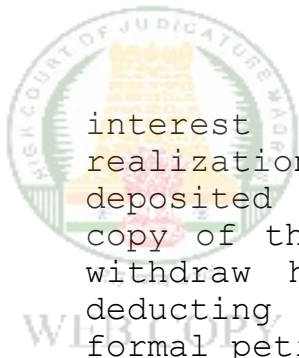
11.There is no proof regarding the income of the claimant. In the above circumstances, the Tribunal fixing the income as Rs.4,500/- (Rupees Four Thousand and Five Hundred only) in the year 2012, is reasonable.

12.The disability fixed by the Doctor is only partial permanent disability. On the basis of **Rajkumar** case, this Court calculated the compensation for each percentage of the disability as Rs.3,000/- (Rupees Three Thousand only). The compensation for 56% disability is fixed as 1,68,000/-. The compensation fixed under all other heads are reasonable. There is no necessity to modify them.

13.Hence, the total compensation amount is fixed as Rs.2,09,500/- (Rupees Two Lakhs Nine Thousand and Five Hundred only).

14.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellant is entitled to a sum of Rs.2,09,500/- (Rupees Two Lakhs Nine Thousand and Five Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15.The second respondent is directed to deposit Rs.2,09,500/- (Rupees Two Lakhs Nine Thousand and Five Hundred only) with 7.5%



interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw his respective share with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tirunelveli.

Copy to

The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGAVAN, Advocate (SR-20202[F] dated 25/06/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-20475[F] dated 28/06/2021)

C.M.A. (MD) No.825 of 2015
24.06.2021

KMK (CO)
KB(08.07.2021) 4P 6C