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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.1080 OF 2018

V.Sivaramakrishnan

...Appellant / Petitioner

Versus

1.M/s.Kumbakonam Central Co-op Bank Ltd.,  
Kumbakonam Taluk,  
Thanjavur District,  
Kumbakonam.

2.IFFCO TOKIO General Insurance Company Limited,  
No.28, Old No.195,  
North Usman Road,  
T.Nagar, Chennai - 600 017.

...Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree made in MCOP No.5030 of 2010, dated 13.11.2017 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.M.Malar

For Respondents : Mr.P.Anbarasan for R1,  
Mr.J.Michel visuvasam for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant-claimant against the judgment, dated 13.11.2017 made in MCOP No.5030 of 2010 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellant is the claimant in M.C.O.P.No.5030 of 2010 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. He filed the above claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.02.2010. According to the appellant, on 19.02.2010, at about 16.30 hours, when he was traveling as a passenger in Bolero Car bearing Reg No.TN-49-AX-602 owned by the first respondent bank, from Chennai to Thindivanam, a lorry bearing Reg. No.TN-59-AA-4632 was



proceeding in front of the car. At that time, the driver of the lorry suddenly applied brake and without noticing it, the driver of the Bolero Car hit the rear side of the lorry. In the impact, the claimant sustained injury in his right ear, simple injuries all over the body and fracture in his head. Immediately the claimant was taken to Government General Hospital, Chennai where he was admitted as an inpatient from 19.02.2010 to 02.04.2010 for about two months. According to the appellant/claimant, at the time of accident, he was 58 years old, employed as a Priest in a temple and was earning a sum of Rs.10,000/- per month. Therefore, for the injuries he has sustained, the claim petition was filed claiming a sum of Rs.6 lakhs as compensation as against the owner/first respondent and insurer of the first respondent vehicle.

3. The original petition was contested by the Insurance Company stating that at the time of accident, the driver of the Bolero Car did not possess valid driving licence and thereby committed violence of policy conditions. It is also stated that the claimant travelled as an unauthorised passenger in the car besides the driver of the car driven it in a rash and negligent manner and hit the rear side of the lorry and caused accident. While so, the Insurance Company is not liable to pay any compensation to the claimant. Therefore, it was pleaded by the Insurance Company for dismissal of the claim petition.

4. Before the Tribunal, the appellant-claimant examined himself as P.W.1 and 2 other witnesses who are Doctors, have been examined as Pws.2 and 3. Exs.P1 to P16 were marked on the side of the appellant-claimant. On the side of the respondent/Insurance Company, one Anbalagan, was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

5. The Tribunal by award dated 13.11.2017 has concluded that the driver of the Car, due to his rash and negligent driving, has caused accident and to arrive at such a conclusion, the Tribunal relied on Ex.P1, copy of FIR registered against the driver of the Car. The Tribunal also placed reliance on Ex.P11 Final Report filed against the driver of the Car. As regards quantum, the Tribunal taking note of the age of the claimant and the period of hospitalisation and other material evidence, has awarded a total sum of Rs.80,500/- which rounded off to Rs.81,000/- under the following heads:

| S.No. | Heads              | Total Rs. |
|-------|--------------------|-----------|
| 1     | Medical Bills      | 4,500     |
| 2     | Disability         | 42,000    |
| 3     | Attendance Charges | 2,000     |
| 4     | Loss of Income     | 12,000    |



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| S.No. | Heads                 | Total Rs. |
|-------|-----------------------|-----------|
| 5     | Pain and suffering    | 10,000    |
| 6     | Transport to Hospital | 5,000     |
| 7     | Extra Nourishment     | 5,000     |
|       | Total                 | 80,500    |

6. The learned counsel for the appellant would vehemently contend that the amount awarded by the Tribunal is not in consonance with the nature of injuries sustained by the appellant or the period of treatment undergone by him. According to the counsel for the appellant, the appellant was admitted as an inpatient for about two months in Government Hospital and had undergone enormous pain and suffering at his advanced age due to the injuries. The claimant/appellant could not continue his avocation any longer and he has to depend others even for his medical expenses. Even though the Tribunal in Paragraph 9 had elaborately dealt with the injuries sustained by the appellant and the period of hospitalization, it had awarded a meager sum of Rs.42,000 towards disability. For pain and suffering, a sum of Rs.10,000/- has been awarded which is very low. The Tribunal has grossly ignored the assessment of disability made by Pws.2 and 3 which resulted in awarding the very meagre amount as compensation. In paragraph 11 of the impugned award, the Tribunal has observed as follows:

On perusal of discharge summary issued by the Government hospital, Chennai in Ex.P4 it is found that the petitioner sustained right humerus fracture shaft, fisher fracture (R) temporal bone, abnormal mobility in the right midarm. As per manual in pag no.6, 7, 8 is mentioned as 19%.

Having held so, without any reason, the Tribunal assessed the disability of the appellant only at 14%, which is contrary to the deposition of P.Ws.2 and 3. In any event, the various amount awarded by the Tribunal is measly and it warrants interference by this Court.

7. On the above contention, this Court, heard the learned counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, who, in unison, have stated that the award passed by the Tribunal is reasonable. The Tribunal has taken note of the age of the appellant at the time of accident and awarded compensation which is just and proper and the same does not require any interference by this Court.

8. I have heard the learned counsel appearing on either side and perused the medical records.



9. The Insurance Company has not come with any appeal questioning the liability fastened on them. Therefore, the award passed by the Tribunal insofar as it relates to fixing of liability on the Insurance Company has become final. Thus, this Court is no longer dealing with the question of liability in this appeal.

10. The appellant/claimant has filed this appeal for enhancement of compensation. The appellant was aged 58 years at the time of accident. To prove his income, he has not filed any document. It was merely stated that he was working as a Priest in a temple and was earning a sum of Rs.10,000/- p.m.

11. To prove the nature of injuries sustained by him, the appellant has examined two witnesses viz., P.Ws.2 and 3. While P.W2, Doctor assessed the disability of the claimant at 45% and PW3 assessed it at 40%, the Tribunal discarded the disability assessed by P.Ws2 and 3 by placing reliance on Ex.P4, in which it was stated that at the time of admission, the patient was conscious oriented. Therefore, the Tribunal concluded that the head injury suffered by the appellant has no repercussion. Accordingly, the Tribunal had taken the disability of the claimant at 14% and awarded a sum of Rs.3,000/- per percentage of disability. This approach of the Tribunal cannot be countenanced. When the appellant had examined two Doctors and they have assessed disability at 85% in total, the Tribunal could have at least taken 40% of disability for the purpose of awarding compensation. More so, the appellant was admitted as an inpatient in the Government General Hospital for a period of two months. It is also stated that even after discharge, he has taken treatment in a private hospital. Having regard to the above undisputed facts, this Court is of the view that a sum of Rs.1,20,000/- could be awarded towards disability by taking 40% of disability and awarding Rs.3,000/- per percentage, which will meet the ends of justice.

12. For medical bills, the Tribunal has awarded a sum of Rs.4,500/- based on Ex.P5, Discharge Summary, Ex.P14 X-Ray Report and Ex.P16, Additional bills. However, the Tribunal did not award any amount towards future medical expenses. The Tribunal could have awarded taking note of the grievous injuries sustained by the appellant. Therefore, this Court is of the view that awarding a sum of Rs.15,000/- towards medical expenses as well as future medical expenses would be fair and reasonable.

13. For attendant charges, the Tribunal has awarded a very meagre amount of Rs.2,000/-. As the appellant was admitted as inpatient for 47 days in Government Hospital, this Court is of the view that a sum of Rs.500/- per day shall be awarded towards



attendant charges and totally Rs.23,500/- is hereby awarded towards attendant charges.

14. For loss of income during the period of treatment, the Tribunal awarded a sum of Rs.12,000/-. It is stated that the appellant was hale and healthy prior to the accident and if he did not suffer injuries in the accident, he could have continued his avocation. Having regard to this, a sum of Rs.30,000/- is fixed towards loss of income during the period of treatment which would meet the ends of justice.

15. For pain and suffering, the Tribunal awarded a sum of Rs.10,000/-. It is noted that the appellant was 58 years at the time of accident and was admitted as an inpatient for at least 47 days and that the pain and sufferings he would have confronted is enormous. Taking note of this, a sum of Rs.25,000/- is hereby awarded towards pain and sufferings.

16. For Transportation and Extra Nourishment, the Tribunal has awarded a sum of Rs.5,000/- each, which in the opinion of this Court is fair and reasonable and they warrant no interference.

17. Thus, the compensation awarded by the Tribunal is modified and re-calculated as follows:

| S. No | Description           | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|-----------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Medical bills         | 4,500                           | 15,000                            | Enhanced                               |
| 2.    | Disability            | 42,000                          | 1,20,000                          | Enhanced                               |
| 3.    | Attendant charges     | 2,000                           | 23,500                            | Enhanced                               |
| 4.    | Loss of income        | 12,000                          | 30,000                            | Enhanced                               |
| 5.    | Pain and sufferings   | 10,000                          | 25,000                            | Enhanced                               |
| 6.    | Transport to Hospital | 5,000                           | 5,000                             | Confirmed                              |
| 7.    | Extra nourishment     | 5,000                           | 5,000                             | Confirmed                              |
|       | Total                 | Rs.80,500/-                     | Rs.2,23,500/-                     | Enhanced by Rs.1,43,000/-              |

18. In the result, the judgment and decree, dated 13.11.2017 made in M.C.O.P.No.5030 of 2010 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes,



Chennai is modified. This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.81,000/- is hereby enhanced to Rs.2,23,500/- (Rupees Two lakhs Twenty Three Thousand and Five Hundred only). Insofar as the interest portion is concerned, the Tribunal has directed to pay the award amount with 9% per annum which is contrary to the convention adopted by this Court in all cases of this nature. Therefore, the rate of interest is awarded at 7.5% to maintain uniformity in all the cases without any discrimination. Accordingly, the interest awarded by the tribunal at 9 % per annum is modified. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest at 7.5 % per annum from the date of claim petition to till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the amount deposited on filing proper application. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. No costs.

Sd/-  
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

vum

To

1.The Motor Accidents Claims Tribunal,  
II Court of Small Causes, Chennai

Copy To

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

+1cc to M/s.M.Malar, Advocate Sr.No.6549

+1cc to M/s.Michael Viswasam, Advocate Sr.No.6794

C.M.A.No.1080 of 2018

SJ(CO)  
RVM(08/06/2022)