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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.775 of 2013

S.Natarajan

... Appellant / Claimant

Vs.

1.Muthuswamy

2.S.Palaniswamy (Proprietor)

3.The New India Assurance Company Ltd.,
Divisional Office,
Kumaran Road,
Tirupur 641 601.

4.M/s.Samuraj & Co.,
390 A, 100ft Road,
Tatabad,
Coimbatore 12.

5.United India Insurance Co. Ltd.,
Divisional Office,
Bank of Baroda Building,
4th Floor, State Bank Road,
Coimbatore.

..Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 07.10.2003 made in MCOP No.498 of 1995 on the file of the Additional District Court (Fast Track Court No.V), Motor Accident Claims Tribunal, Coimbatore at Tirupur.

For Appellant : Mrs.S.Sasikala

For Respondents : R1-Died
No appearance for R2
Mr.K.Vinod for R3
Mr.K.Ayyadurai for R4
Ms.I.Malar for R5



JUDGMENT

This appeal has been filed against the judgement and decree dated 07.10.2003 made in MCOP.No.498 of 1995 on the file of the Motor Accidents Claims Tribunal and Additional District Court (FTC No.5), Coimbatore.

2.The appellant herein is the claimant. The first respondent is the driver under the second respondent, the second respondent is the owner of the bus and the third respondent is the insurer of the bus. The fourth respondent is the owner of the truck lorry and the fifth respondent is the insurer of the truck lorry.

3.The brief facts of the case is as follows :-

On 02.03.1995 at about 18.00hrs while the appellant was travelling in a bus bearing registration No.TN39-A-3443 belong to NRT company running from Coimbatore to Trichy main road near Perumbali Kuttai, the said bus was driven by the first respondent in the course of employment under the second respondent. At that time, a truck lorry bearing Registration No.TN37-A-8944 driven by one V.Shanmugam in the course of regular employment under the fourth respondent had dashed against each other, thereby, the bus was broken into pieces and the truck lorry got damaged. In the said occurrence, as many as 18 persons died including the driver of the truck lorry and as many as 47 persons were injured. The Palladam Police had registered a case under Sections 279, 337, 336 and 304(A) IPC in Cr.No.120 of 1995 against the driver of the bus/first respondent.

4.The appellant/claimant herein was travelling in the bus, due to the accident he sustained grievous injurious in his stomach, shoulder, chest and other parts of his body and he was taken to Government Hospital, Palladam for first aid. The health condition of the appellant has become worsen and thereafter, he was taken to KG.Hospital, Coimbatore and he had undergone surgery and then admitted as inpatient for a period of four months. The appellant is an agriculturist and running a poultry farm and also doing real estate business in the locality and earning a sum of Rs.20,000/- to 30,000/-p.m. The appellant has undergone severe pain and mental agony and he was unable to do his normal work due to the grievous injuries sustained by him in his chest and stomach. The appellant, in his claim petition, has stated that he had spent a sum of Rs.2,50,000/- towards medical expenses and restricts his claim before this Court to a sum of Rs.1,76,000/- and submits that the Tribunal failed to award any compensation under the above head.

5.Before the Tribunal, the 3rd respondent/insurer of the Bus had filed counter stating that the accident had happened only



due to the rash and negligent driving of the truck lorry driver and the appellant is trying to gain out of the unfortunate accident and the claim under the head of medical expenses is erroneous and not supported by valid documents. The monthly income of the appellant during the relevant period of time is highly exaggerated and prayed for dismissal of the claim petition.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred solely due to the rash and negligent driving by the driver of both the vehicles involved in the accident and awarded a sum of Rs.2,37,400/- as compensation to the appellant.

7.Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Petition, seeking enhancement.

8.Heard both sides and perused the entire materials available on record.

9.The learned counsel for the appellant/claimant attacked the Award that the Tribunal has not considered the case of the appellant in a proper manner. The Tribunal had disposed batch of claim petitions by a common judgment filed by the injured claimant's and by the legal heirs/family members of the deceased in the accident. The Tribunal ought to have considered each case on its own merits, in this case, the amount spent by the claimant towards medical expenses has been omitted in toto. Further, the monthly income of the appellant fixed by the Tribunal is very low.

10.According to the learned counsel for the appellant, the appellant had taken treatment as in-patient in hospital for quite long time. The Tribunal has not awarded any amount towards medical expenses, attender charges, transportation, loss of amenities, mental agony and damages to clothes. From the materials on record, it is seen that the Tribunal has awarded a sum of Rs.2,30,400/- towards loss of income, Rs.5,000/- under the head of severe injuries and a sum of Rs.2,000/- towards extra nourishment. The medical expenses claimed by the appellant was not supported by any evidence and therefore, no award was passed. Considering the nature of injuries suffered by the appellant and the entire materials on record, the Tribunal has granted a just compensation and there is no error in the said award warranting interference by this Court.

11.In the result, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.2,37,400/- along with interest and costs is confirmed. The 3rd and 5th



respondents/Insurance Company are jointly and severally directed to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.498 of 1995. The appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The Award of the Tribunal remains unaltered in other respects. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msv

To

The Additional District Judge,
(Fast Track Court No.V),
Motor Accident Claims Tribunal,
Coimbatore at Tirupur.

Copy to

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

+lcc to Ms.I.Malar, Advocate, S.R.No.25559
+lcc to Mrs.S.Sasikala, Advocate, S.R.No.25578
+lcc to Mr.K.Vinod, Advocate, S.R.No.25619

C.M.A.No.775 of 2013

RP[co]
NSK/05/07/2022