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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 1107 of 2018

S.Murugesan

...Appellant/Petitioner

Vs

1.R.Janakiraman

(since R1 remained exparte before the Tribunal his presence may be dispensed with)

2.The Oriental Insurance Company Limited.,

No.115/116, Second Floor

Oriental House

Prakasam Salai, Broadway

Chennai - 600 108.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree dated 10.03.2017 and made in M.A.C.T.O.P.No. 402 of 2013 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. F.Terry Chella Raja

For 1st Respondent : Ex-parte

For 2nd Respondent : Mr. D.Baskaran

J U D G M E N T

I had the pleasure of hearing Mr. F.Terry Chella Raja, learned counsel for the appellant and Mr.D.Baskaran, learned counsel for the second respondent.

2. The claimant in M.C.O.P.No. 402 of 2013, which was pending on the file of the III Court of Small Causes Chennai, is the appellant herein.

3. The claimant had a necessity to file a claim petition, owing to the fact that when he was riding his motor bike bearing registration No. TMF 3083 at Arcot Road, Vadapalani, opposite to Vijaya Hospital another motorcycle



bearing Registration No. TN23 AV 9506 belonging to the first respondent dashed against the motor cycle of the petitioner and the claimant suffered bodily injuries. This accident occurred on 28.10.2012 at 9.00 p.m.

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4. The Tribunal had examined various circumstances and also observed that the first respondent did not have any driving license and also examined Exhibits R-1 to R-4. The Tribunal determined that the negligence was on the part of the first respondent.

5. I would affirm such finding.

6. With respect to the grant of compensation, the Tribunal had examined the evidence of PW-2 / Doctor, who stated that the claimant was in a position to continue to do the work, which he was doing. The work was as a server in a Hotel. He had suffered right hand fracture in the wrist.

7. It had been vehemently argued by Mr. F.Terry Chella Raja, learned counsel for the appellant that owing to this particular fracture, continuation of work as a Server would be affected and therefore, the disability granted at 40% by the Tribunal should be interfered with and the opinion of the Doctor determining 55% partial permanent disability should have been taken into consideration by the Tribunal.

8. It is however seen that the Tribunal has also granted compensation under various heads, namely,

(i) pain and suffering	:	Rs.40,000/-
(ii) mental and physical shock	:	Rs.10,000/-
(iii) Loss of amenities	:	Rs.25,000/-

9. The aforementioned three heads of compensation have been very seriously assailed by Mr.D.Baskaran, learned counsel for the second respondent. The disability had been fixed at 40% and Rs.3,000/- had been taken per percentage. The Loss of Income had been given at Rs.30,750/-.

10. Taking into consideration all the factors, it would only be appropriate that there is no interference with the above amount granted. Even if the percentage of disability is interfered with, this Court would necessarily then have to interfere with the compensation granted under the aforementioned three heads.

11. Any claim under the Motor Vehicles Act being a welfare legislation, will have to be adjudged based on the injuries suffered and the nature of the employment and the



compensation granted. It is the final compensation amount which has to be examined and I hold that in the instant case a fair and just compensation has been granted.

12. The Tribunal has also granted loss of income at Rs.250 x 123 days; whereas the claimant took treatment only for three days as an inpatient. The Tribunal had thereafter presumed that he was not in a position to attend his work for another four months. Thus, if the award were to be interfered with respect to a portion, then it will have to be interfered in its entirety. Since the Insurance Company has not filed any Appeal, let me not interfere with the order and confirm the compensation already granted.

13. In view of the above, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vsg

To

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

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

+lcc to Mr.D.Bhaskaran, Advocate SR. No.19343

CMA No. 1107 of 2018

JPL (CO)
PR (29/04/2022)