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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1207 of 2018

Mannakatti

...Appellant/Petitioner

v.

1.P.Shivaji

2.United India Insurance Company Limited,
'Silingi Building'
No.134, Greams Road,
Chennai - 600 006.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 22.09.2017 made in MACTOP No.410 of 2011 on the file of the Motor Accident Claims Tribunal / Special Sub Judge No.II to deal with MCOP cases holding Full Additional Charge of V Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

R1 : Ex-parte

For R2 : Ms.R.Rathna Thara

JUDGMENT

The claimant in MCOP No.410 of 2011 which was on the file of the Motor Accident Claims Tribunal / Special Sub Judge No.II to deal with MCOP cases holding Full Additional Charge of V Court of Small Causes, Chennai is the appellant herein.

2.The claimant is aggrieved by the quantum of compensation granted for injuries suffered on 28.08.2007 at around 12.00 p.m in the afternoon when he was walking in Thirunavallur Road near Indian Bank when a private bus bearing Regn. No.TN-31-11-3308 had dashed against him.

3.The injuries he had suffered were as follows:

"Head injuries, right side eyebrow cut injury, fracture of right shoulder, fracture of zygoma, dislocation right hip and multiple injury all over the bodies."

4.The claimant was aged about 60 years at that particular point of time and he claimed that he was a centring



worker and was earning a sum of Rs.500/- per day.

5.The Tribunal on the basis of the evidence presented before it by order dated 22.09.2017, had granted a total compensation of Rs.2,50,500/-. Aggrieved by such compensation granted, he had preferred the present Appeal.

6.Heard both sides.

7.It is the contention of the learned counsel for the appellant that the appellant was doing centring work, which required skill and owing to injuries suffered, that work could not be performed by him. He was aged 60 years at that particular point of time. It is also stated that during the course of trial, PW-2 / Medical Professional had been examined and he had given his assessment of the disability at 65%. The grievance is that the Tribunal had reduced the disability to 50%. It is contented that the disability at 65% should be retained.

8.Learned counsel for the 2nd respondent / Insurance Company pointed out that the Tribunal had been more than liberal in granting compensation under various heads like mental agony, physical discomfort and also mental agony to the family members and stated that if the Insurance Company had filed an appeal, then there would be substantial grounds to interfere with the award granted by the Tribunal.

9.However in view of the fact that a sum of Rs.2,50,500/- had been granted as compensation let me not delve into that particular argument any further and let the matter rest at that.

10.A perusal of the order shows that the Tribunal had determined that the accident had occurred due to the rash and negligent manner in which the offending bus was driven and caused the accident. I would affirm that particular finding.

11.With respect to the nature of injuries and also the percentage of disability which had been adopted by the Tribunal, it is seen from the discussion that PW-2 had determined the disability as follows:-

"1.Post traumatic head ache giddiness tremors (L) hand and leg memory deficit at 25%.

2.Mal united fracture Zygma T.joint fibrosis and chewing and opening the mouth fully at 20%.

3.Mal united fracture (R), Scapula fibrosis muscle, Abduction (R) Arm 80% beyond difficult. IRER. 50 limited. Difficult to work and carry weight with right hand at 20%."



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12.The Tribunal found that PW-2 who had given the aforesaid evidence had not treated the claimant. It was also noted that the claimant had also not produced any evidence to show that owing to the accident, he was not able to work continuously. It was observed by the Tribunal that PW-2 had stated 25% disability for headache and giddiness which is not in accordance with medical jurisprudence. In view of that particular evidence adduced by PW-2, the Tribunal had come to a finding that it would be apt and just to determine the disability at 50%. I would not disturb that particular finding.

13.I am really concerned with the grant of compensation under various heads probably to make up that difference of assessment at 50% disability by the Tribunal. But again to repeat, since the Insurance Company had not filed any appeal, it would not be proper on my part to interfere with the award as granted by the Tribunal and enter into a detailed discussion about the compensation to be granted.

14.The compensation as granted by the Tribunal is confirmed.

15.With the above observations, this Civil Miscellaneous Appeal stands dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Motor Accident Claims Tribunal /
Special Sub Judge No.II to deal with
MCOP cases holding Full Additional Charge
of V Court of Small Causes, Chennai.

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

+1cc to Mr.M.Malar, Advocate SR.No.24498

+1cc to Mr.R.Rathna Thara, Advocate SR.No.24394

CMA.No.1207 of 2018

KV (CO)
GN(06/05/2022)