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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.1702 of 2021
and CMP.No.9002 of 2021

The Oriental Insurance Co. Limited,
A Dwaraka, II Floor,
79, Uttamar Gandhi Road,
Chennai 600 034.

...appellant

vs.

1. V.Prabhu

2. The Manager,
A-Diet Express Hospitality Services,
136, Thodugadu Village,
Tiruvallur Main Road, Sriperumpudur,
Kancheepuram District.

...respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the decree and judgment dated 09.10.2020 made in MCOP.No.2078 of 2013 by the Special Sub Court II-cum-Motor Accidents Claims Tribunal and Small Causes Court, Chennai.

For Appellant : Mr.E.Chandrasekaran

For Respondents
for R1 : Mr.G.Punniakoti
for R2 : Notice served - No appearance

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]
This appeal is directed against the judgment and award passed by the Special Sub Court II-cum-Motor Accidents Claims



Tribunal and Small Causes Court, Chennai in MCOP.No.2078 of 2013, dated 09.10.2020.

2. According to the claimant, on 10.06.2010 at about 11.30 p.m., he was returning from his work in a motorcycle bearing Registration No. TN-22-BJ-7645 on Rajiv Gandhi Salai. At that time, a Maxi Truck bearing Registration No.TN-21-AD-9104 driven by its driver in a rash and negligent manner, hit against him. Due to the impact, he sustained grievous injuries. Hence, he sought for a sum of Rs.35,00,000/- as compensation.

3. The Insurance Company resisted the claim petition disputing the manner of accident as projected by the claimant and also the age, occupation and income of the claimant and also their liability to pay compensation.

4. To substantiate the case on the side of the claimant, he himself examined as PW1 and marked Exs.P1 to P16. On the side of the Insurance Company, neither any witness was examined nor any document was marked. Disability Certificate Ex.C1 was marked as Court document.

5. The Tribunal, after analysing the entire oral and documentary evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Maxi Truck and directed the Insurance Company to pay a compensation of Rs.35,08,500/-. Challenging the same, the present appeal has been filed by the Insurance Company.

6. The learned counsel for the Insurance Company submitted that the claimant has not produced any valid record to prove that he was earning an income of Rs.20,000/- per month at the time of the accident. Hence, the monthly income may be re-fixed and consequently, the compensation may be reduced.

7. On the other hand, the learned counsel for the claimant submitted that the claimant marked Ex.P11 copy of income tax to prove that he earned received Rs.20,000/- per month. He further added that the amounts awarded by the Tribunal under the conventional heads, are very meagre.

8. In order to prove the income of the claimant, Income Tax Returns for the Financial year 2010 - 11 was produced. As rightly observed by the Tribunal, the claimant ought to have filed Income Tax Returns for the Financial year 2009 - 10 since the accident had occurred in the year 2010. However, considering



the fact that the claimant was working as an Advocate, this Court fixes Rs.10,000/- as monthly income and adds 40% towards future prospects, therefore, the total amount would be Rs.14,000/- [10,000 + 4,000]. Considering the age of the claimant at the time of the accident, if proper multiplier 16 is applied, the amount comes to Rs.26,88,000/- [14,000 x 12 x 16]. Since the claimant suffered 53% disability, he is entitled for Rs.14,24,640/- [26,88,000 x 53%] under the head Functional Disability.

9. Taking note of the facts of the case, this Court is of the view that the amounts awarded by the Tribunal under the conventional heads are on the lower side, hence, the same are enhanced as follows:- Rs.1,00,000/- towards Pain and Sufferings; Rs.50,000/- towards Transportation; Rs.50,000/- towards Extra Nourishment; Rs.50,000/- towards Attender Charges; Rs.5,000/- towards damages to clothes and other articles; and confirms the amount of Rs.5,17,202/- awarded by the Tribunal towards Medical Expenses. Since no amount was awarded under the head Loss of Amenities, sum of Rs.50,000/- is awarded under such head. In total, the claimant is entitled to Rs.22,46,842/-, which is rounded off to Rs.22,47,000/-, along with 7.5% interest from the date of claim petition till the date of realization excluding the period from 02.02.2018 to 21.06.2019 as ordered by the Tribunal. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Functional Disability	28,49,280	14,24,640
2.	Pain and Sufferings	70,000	1,00,000
3.	Transportation Charges	30,000	50,000
4.	Extra Nourishment	40,000	50,000
5.	Damages to Clothes and other Articles	2,000	5,000
6.	Medical Expenses	5,17,202	5,17,202
7.	Attender Charges	-	50,000
8.	Loss of Amenities	-	50,000
	Total	35,08,482	22,46,842 rounded off to 22,47,000



10. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. It is represented by the learned counsel for the Insurance company that 50% of the award amount was already deposited by them, hence, the balance modified award amount with accrued interest and costs, shall be deposited within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

pvs

To

1.The Special Sub Court No.II,-cum
Motor Accident Claims Tribunal
and Small Causes Court, Chennai

+lcc to Mr.G.Punniakoti, Advocate SR.No.10523

C.M.A. No.1702 of 2021

SSV(CO)
CB(31/03/2022)