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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.02.2022

DATED: 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 217 of 2017

S.Isaac

... Appellant/Petitioner

Vs

1. B.Pradeep Kumar

2. Shriram General Insurance Company Limited.,

City Centre Complex, 2nd Floor,

No.66, Thirumalai Pillai Road

T.Nagar, Chennai - 600 017.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree dated 25.07.2016 and made in M.A.C.T.O.P.No. 6153 of 2013 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For 2nd Respondent: Mr.K.Poomalai

J U D G M E N T

The petitioner in M.A.C.T.O.P.No. 6153 of 2013, which was pending on the file of IV Court of Small Causes, Chennai, aggrieved by the Judgment and Decree dated 25.07.2016 is the appellant herein.

2. The appellant had filed the aforementioned Original Petition before the Motor Accident Claims Tribunal consequent to an accident suffered while driving his motorcycle bearing Registration No. TN-73-W-1060 and proceeding from Arakkonam to Mosur Road, when a car bearing Registration No. TN-22-BD-0607 coming in the opposite direction hit his motorcycle, owing to which he suffered injuries. With respect to the accident, a FIR had also been lodged and copy of the same had been produced as



Ex.P-1. The Tribunal had held that the accident occurred only owing to the rash and negligent manner, in which, the car was driven and therefore proceeded to examine the compensation payable to the appellant herein for the injuries suffered.

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3. The injury suffered by the appellant was fracture of right Tibial Plateau. PW-2 Dr.J.R.R.Thiagarajan was examined before the Tribunal to give his assessment of the disability suffered by the petitioner owing to such injury and it was opined that the appellant had suffered 45% disability. The Tribunal however did not take that as the gospel truth and on the other hand held that it would only be just that disability is assessed at 30%. The Tribunal found fault that PW-2 had not filed any worksheet or guidelines and had not assessed the disability with respect to the whole body.

4. The Tribunal considering the age of the appellant, who was 37 years old at the time of accident and the nature of the injuries sustained, granted a sum of Rs.3,000/- for 1% disability and thus granted a sum of Rs.90,000/- as compensation towards the injury suffered. The Tribunal also granted compensation under other heads of pain and suffering, extra nourishment, transport to hospital, damages to clothes, attender charges, medical expenses, future medical expenses and loss of income and loss of amenities and finally, granted a total compensation of Rs.1,52,850.00, rounded off to Rs.1,53,000/-. Questioning that compensation, the present Appeal had been filed.

5. Heard Mr.F.Terry Chella Raja, learned counsel appearing for the appellant and Mr. K.Poomalai, learned counsel appearing for the second respondent. There is no appearance on behalf of the first respondent.

6. The learned counsel for the appellant placed reliance on the Judgment reported in 2010 (2) TNMAC 581 (SC) [Raj Kumar Vs. Ajay Kumar & Another], and the Judgment reported in 2018 (2) TNMAC 289 (SC) [Anant Vs. Pratap].

7. It had been complained by the learned counsel for the appellant that the Tribunal had misdirected itself on the percentage of the disability and no cogent reasons have been given to disregard the opinion of PW-2, who had examined the appellant herein and had opined that the disability suffered was 45%. It was also stated by the learned counsel for the appellant that the petitioner was working as a Maistry and injury to the leg would necessarily impair prospects of future earning as the appellant would not be in a position to discharge



his employment as a Maistry to the level to which he could have done, if he had not suffered the injury. It was therefore stated that loss of income and loss of future prospects should have been examined as grounds for grant of compensation by the Tribunal. It was also stated by the learned counsel that grant of fixed amounts under various heads have to be re-examined by this Court and it was the contention of the learned counsel for the appellant that an upward revision in compensation granted is warranted and therefore, the learned counsel invited this Court to re-examine the entire award granted and determine the compensation, for which, the appellant is entitled to, particularly taking into consideration, the age, the nature of injuries and the nature of employment of the appellant.

8. Mr. K.Poomalai, learned counsel for the second respondent presented a very balanced perspective of the entire issue and the learned counsel was also of the opinion that the disability suffered should be examined qua the employment of the petitioner. The learned counsel also stated that the fact that the petitioner had suffered injuries is neither denied nor disputed and the fact that it was caused only owing to the rash and negligent driving of the car which came in the opposite direction had been established and accepted as a fact by the Tribunal and therefore, the petitioner was entitled for compensation.

9. I have carefully considered the arguments advanced and the materials available on record.

10. The appellant at the time of the accident was aged about 37 years. He suffered an Motor Accident while driving his motorcycle, which was hit by a car, which, even according to the Tribunal, was driven in a rash and negligent manner endangering public safety. Therefore, there cannot be any contributory negligence attributed to the petitioner herein for the injury suffered. The injury also was a fracture of the right Tibial Plateau. The petitioner was working as a Maistry, and quite obviously this injury would seriously impair his avocation as Maistry.

11. In 2010 (2) TNMAC 581 (SC) [Raj Kumar Vs. Ajay Kumar & Another], the Hon'ble Supreme Court had held that the Tribunal should first decide whether the disability suffered is permanent disability and then it has to further determine whether such permanent disability affected the earning capacity and whether it affected earning any kind of livelihood or whether inspite of permanent disability, the claimant could still effectively carry



on activities and functions which he was earlier carrying on or whether he was restricted from discharging his previous activities but could still carry on some other or lesser scale of activity to earn livelihood.

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12. In the instant case, the petitioner was working as a Maistry. In view of the fracture to the tibial bone, his continuation to work as a Maistry would be impaired till it was fully healed, as the nature of work involved, carrying load and also perilously perching on scaffoldings as is done by any Maistry. If the legs cannot sustain the weight of the body owing to the fracture, then, the petitioner herein could not effectively function as a Maistry to the extent to which he was discharging such work prior to the accident.

13. PW-2 had assessed the disability at 45%. The Tribunal had complained that the worksheet and guidelines had not been produced by PW-2. The Tribunal should keep in mind that if during the course of recording the evidence, it was found that certain clarifications are required then PW-2 being an expert witness should have been put questions by the Tribunal and answers should have been extracted as to how 45% disability was determined. Commenting about it in the course of the order without getting any clarification or opinion from the witness in the witness box cannot be encroached or countenanced.

14. I would therefore go with the opinion of PW-2 and determine the disability at 45%. The Tribunal had further awarded a sum of Rs.3,000/- for 1% disability while determining the quantum which can be granted. I would also interfere with that and amount grant a sum of Rs.4,000/- for 1% disability. Therefore, the grant of Rs.90,000/- is revised to Rs.1,80,000/-.

15. The amounts awarded by the Tribunal under other heads appear to be arbitrary and I would interfere with the compensation granted for extra nourishment to Rs.6,000/- Transport to hospital at Rs.5,000/-; damages to clothes to Rs.1,000/-, medical expenses at Rs.10,000/-, future medical expenses at Rs.3,000/- and fix the notional income at Rs.7,500/- per month. Considering the nature of the injuries I would grant a period of three months towards loss of income and accordingly, grant Rs.22,500/- towards loss of income. Thus, the total compensation comes as follows:-

1. Disability	:	Rs. 1,80,000/-
2. Pain and suffering	:	Rs. 25,000/-
3. Extra nourishment	:	Rs. 6,000/-
4. Transport to Hospital:		Rs. 5,000/-



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5. Damages to clothes :	Rs.	1,000/-
6. Attender charges :	Rs.	5,600/-
7. Medical Expenses :	Rs.	10,000/-
8. Future Medical Expenses:	Rs.	3,000/-
9. Loss of Income	:Rs.	22,500/-
10. Loss of Amenities :	Rs.	5,000/-

Rs.2,63,100/-

13. In fine, the Appeal is allowed. No costs. The award is modified. The compensation award is enhanced to Rs.2,63,100/-.

14. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsg

To

1.The IV Court of Small Causes,
Chennai.

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

+lcc to Mrs.M.Malar, Advocate SR.No.8903

+lcc to Mr.K.Poomalai, Advocate SR.No.9088

CMA No. 217 of 2017

KV(CO)

GN(01/03/2022)