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CMA No.3838 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No.3838 of 2019

S.Balamurugan

.. Appellant

Versus

1.P.Nachimuthu
2.The Managing Director,
Tamilnadu Transports Corporation Ltd.
No.37, Mettupalayam Road,
Coimbatore-641 043.

.. Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.08.2018 made in M.C.O.P.No.843 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant	:	Mr. A. Sathish Kumar
For R1	:	No Appearance
For R2	:	Mr. Murali Vinoth

JUDGMENT

The claimant is the appellant in this appeal. He is aggrieved by the judgment and decree dated 04.08.2018 passed in M.C.O.P.No.843 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal, awarding a sum of Rs.5,04,000/- as compensation for the injuries

he suffered in the accident that had taken place on 29.03.2015.



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As per the claim petition, on 29.03.2015 at about 1.30 p.m., the claimant was driving the TVS Sport motorcycle bearing Registration No.TN-28-AF-3468 at Namakkal to Trichy Main Road. When the vehicle was nearing a place called Periyakandiamman Kovil, the bus bearing Registration No.TN-33-N-2740 was driven by its driver in a rash and negligent manner and hit the two wheeler driven by the claimant. In the impact, the claimant suffered injuries all over the body. He was taken to M.M Hospital, Namakkal, where he had taken treatment for 20 days. At the time of accident, the claimant was 33 years old and earning a sum of Rs.10,000/- per month through his employment as heavy vehicle driver. However, due to the injuries he suffered he could not attend to his employment as before. Therefore, the claim petition was filed claiming a total sum of Rs.20,00,000/- as compensation.

3. In spite of the notice in the claim petition, the respondents did not contest the claim petition and they were called absent and set ex-parte.

4. Before the tribunal, the claimant examined himself as P.W.1 and Dr.Siva Kumar was examined as P.W.2 and Exs.P1 to P11 were marked on his side.



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5. The Tribunal taking note of the nature of injuries suffered by the claimant, awarded a sum of Rs.1,50,000/- towards permanent disability. This amount of compensation was fixed by taking into account that the claimant suffered 50% disability and for each percentage of disability a sum of Rs.3,000/- was awarded. Further, the Tribunal awarded a sum of Rs.10,000/- towards extra nourishment and Rs.40,000/- towards pain and sufferings. In all a sum of Rs.5,04,000/- was awarded by the tribunal towards compensation.

6. The learned counsel for the appellant would vehemently contend that the disability suffered by the appellant are functional disability. Due to the injuries, the appellant/claimant could not take up his employment as before. The learned counsel for the appellant also brought to the notice of this Court the deposition of P.W.2/Doctor Siva Kumar who has stated as follows:

“....In my through clinical examination there is difficulty in chewing. Occlusion of teeth is improper. So he is unable to grind his food completely. He is unable to take hard foods. He has severe short memory loss and Giddiness. He often got seizure disorders for that he on medication till now.

He is unable to concentrate in any work. There is insomnia. At present he cannot do his own job. He is totally depending on others for any work...”



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7. By pointing out the above, the learned counsel for the appellant submitted that due to the injuries, the appellant could not chew food and it had an adverse impact in the digestive functions. He has also suffered memory loss due to the injuries in his head. The claimant has to suffer silently throughout the rest of his life due to the injuries he suffered. While so, the Tribunal ought to have awarded compensation by resorting to multiplier method. However, without any basis and by ignoring the serious disability suffered by the appellant, the Tribunal awarded a meagre sum of Rs.3,000/- per percentage of disability. The tribunal ought to have awarded compensation by applying multiplier method. In fact, the claimant has been taking treatment even till this date for the injuries he suffered in the accident. The claimant is a driver by profession and due to the fracture injuries suffered he could not drive heavy vehicle. Therefore, the counsel for the appellant submitted that the award passed by the Tribunal is required to be interfered by this Court.

8. Even though the respondents were set ex-parte before the Tribunal, the learned counsel for the second respondent submitted that the claimant did not suffer injuries as mentioned in the grounds of appeal. The



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learned counsel for the second respondent seriously disputed the nature of injuries suffered by the claimant and stated that they are not such that it warrants awarding compensation by adopting multiplier method. He even requested this Court to refer the appellant to the medical board to be constituted by this Court to infer and ascertain the nature of injuries suffered by the claimant.

9. This Court taking note of the submissions of the learned counsel for the second respondent, directed the appellant to appear before the Medical Board and directed the Joint Director of Health Service, Namakkal to submit a report from the Salem Regional Medical Board after examining the claimant. Accordingly, the claimant was examined by the Medical Board. The Medical Board by the report bearing Reference No.Na.Ka.No.17366/Ni12/MCOP/2022 dated 06.04.2023 opined that the percentage of disability suffered by the appellant could be assessed at only 10%.

10. As regards the dental disability suffered by the claimant, the Professor and Head of Department, Department of Dental Surgery, Government Mohan Kumaramangalam Medical College & Hospital, Salem, has opined as follows:



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“Regional Medical Board, Government Mohan Kumaramangalam Medical College & Hospital, Salem-1, Ref.No.17366/Ni12/MCOP/2022 dated 01.12.2022.

This is to certify that S.Balamurugan-39, is able to carryout mouth opening, closing and chewing movements without any difficulty. No evidence or any disability seen.”

11. This report of the Professor and Head of Department, Department of Dental Surgery, Government Mohan Kumaramangalam Medical College & Hospital, Salem was forwarded by the Dean, Government Medical College and Hospital, Namakkal through a letter dated 07.04.2013.

12. The medical report received from the duly constituted Medical Board contradict the statement of the appellant. The dental injuries said to have been suffered by the claimant appears to be superfluous and illusionary. The fact remains that the claimant met with an accident. The respondents did not assail the award passed by the tribunal in so far as it relates to the findings rendered by the Tribunal regarding liability on the part of the respondents. This appeal is filed by the claimant seeking enhancement of compensation. The Tribunal taking note of the fact that 50% disability has been assessed by the Doctor, has awarded a sum of Rs.3,000/- per percentage of disability and



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granted Rs.1,50,000/- towards loss of earning capacity. The Tribunal has also awarded compensation under other non-pecuniary heads such as pain and sufferings, transportation and extra nourishment. The overall consideration of the compensation awarded by the Tribunal, in the light of the report given by the Medical Board, would only indicate that the award passed by the Tribunal is just and proper and it is not required to be interfered with.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,04,000/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is confirmed. The respondents are directed to deposit the entire award amount along with interest 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.843 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

13.04.2023

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Index : Yes / No

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A.A.NAKKIRAN, J.,

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To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.

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

C.M.A.No.3838 of 2019

13.04.2023