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CMA.No.1979 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1979 of 2018

K.Durai Kannu

Appellant

Vs

1. P.Velayutham

2. The Manager, United India Insurance
Company Limited, Chennai-2

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 21.01.2008, made in MCOP.No.1010 of 2005, by the Sub Court (MACT) Tiruvallur.

For Appellant : Mr.K.R.Ponnusamy for M/s.Anand and Suryas

For Respondents : Mr.C.Paranthaman-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 21.01.2008, made in MCOP.No.1010 of 2005, by the Sub Court, MACT, Tiruvallur, for enhancement of compensation.
2. The claimant, who was aged about 50 years at the time of the accident, has filed the claim petition before the Tribunal, seeking a compensation of Rs.1,50,000/- on various heads, for the injuries, such as, fracture on bone of right leg and head, sustained by him, in a motor road accident, which took place on 27.10.2005 at 11.00 hours. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a



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counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the Insurance Company, neither any document was marked nor any witness was examined. Finding that the accident had occurred only due to rash and negligent driving of the driver of the offending vehicle, owned by the 1st Respondent herein, the Tribunal has awarded a total compensation of Rs.90,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	50% Disability Suffered By The Claimant	50000
2	Transportation Expenses	2500
3	Extra Nourishment	2500
4	Medical Expenses	5000
5	Pain and Suffering	10000
6	Loss of Future Income	20000
Total Compensation		90000

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the entire evidence placed on record.
4. The Appellant herein is the claimant. The 1st Respondent herein, who is the owner of the offending vehicle, remained exparte. The 2nd Respondent is the Insurance Company.
5. As regards the negligence aspect, the Tribunal, considering the evidence on record, has held that there was negligent on the part of the driver of the offending vehicle and that the accident had occurred only due to the rash



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and negligent driving of the driver of the offending vehicle. Since the finding, recorded by the Tribunal, with regard to the actionable negligence, has not been assailed by anyone of the Respondents herein, the said finding of the Tribunal with regard to the negligence aspect, fixing the same on the part of the 1st Respondent/driver of the offending vehicle, is liable to be confirmed and accordingly, it is confirmed. As such, it is not necessary to narrate the entire facts in detail in respect of the accident. However, the dispute is only with regard to the quantum of compensation.

6. According to the learned counsel for the Appellant, the Tribunal, having fixed disability at 55% due to the injuries and fractures sustained by him, the Tribunal ought to have awarded more compensation under the said head and further, compensation awarded under the heads of pain and suffering and loss of future earnings is on the lower side and no compensation was awarded for the damage to clothes.
7. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
8. Though it is claimed by the claimant that he was earning a sum of Rs.200/- per day, in the absence of evidence to prove his monthly income, the Tribunal has fixed the daily income of the claimant at Rs.100/-, which is not proper and the monthly income of the claimant can be fixed at Rs.4000/-. The Tribunal held that the claimant would not have earned at least for 6 months due to the injuries sustained by him and hence, for the loss of income and loss of future earning capacity, awarded a sum of Rs.20,000,



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which is not proper and hence, it is enhanced to Rs.24,000/-.

9. Considering the nature of injuries and fractures sustained by the claimant on his right leg, the permanent disability assessed by the Doctor at 55% was rightly reduced to 50% by the Tribunal, based on Ex.P7, disability certificate and other medical records. However, the compensation of Rs.50,000/- as lump sum awarded under the said head is not adequate and proper, in view of the decision reported in **2008 1 TNMAC 300 (R.Pramanathan Vs. The Managing Director, Maruthupandiar Transport Corporation)**. Hence, in the light of the said decision, awarding at the rate of Rs.2,000/- for each percentage of disability would meet the ends of justice. If accordingly worked out, it comes to Rs.1,00,000/- (50 x Rs.2000). Further, a sum of Rs.500/- for the damage to the clothes is awarded. The compensation awarded on the other heads awarded by the Tribunal shall stand confirmed. In all, the claimant is entitled to a sum of Rs.1,49,500/-, as total compensation.

S.No	Category	Award Amount (Rs.)
1	Loss of Future Earnings Due To The Disability Suffered By The Claimant	100000
2	Transportation Expenses	2500
3	Extra Nourishment	2500
4	Medical Expenses	5000
5	Pain and Suffering	15000
6	Loss of Future Income	24000
7	Damage to Clothes	500
Total Compensation		149500

10. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.1,49,500/- (Rupees one



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lakh forty nine thousand and five hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any, deposited already, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire compensation amount with interest, by filing proper application. No costs.

02.03.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Sub Court (MACT) Tiruvallur
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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