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C.M.A. No.245 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.245 of 2018

K.Kasinathan

... Appellant

Vs.

1. Loganathan

2. Narayana Samy

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to modify the Award passed by the Tribunal in M.C.O.P. No.89 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Court, Arani), Tiruvannamalai District.

For Appellant : Mr.M.Mohamed Yasin

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant to modify the Award passed by the Tribunal in M.C.O.P. No.89 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Court, Arani), Tiruvannamalai District.



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2. The appellant is the claimant. The 1st respondent is the driver and the 2nd respondent is owner of the Tractor involved in the accident.

3. The case of the claimant is that on 19.03.2013 at about 8.45 a.m., the claimant was riding a two wheeler on Thimiri to Kalavai Main Road and while nearing the residence of one Krishnamoorthy at Kaniyanoor T. Puthur Village, the Tractor bearing Regn. No.TN-73-A-0838, which came in the opposite direction and driven by its driver in a rash and negligent manner, dashed against the claimant due to which, the claimant sustained injuries all over the body and also sustained fractures in the right hand and right leg. Immediately, he was admitted in the C.M.C. Medical College and Hospital, Vellore and a case was registered against the driver of the Tractor by the Thimiri Police.

4. The claimant filed a claim petition in M.C.O.P. No.89 of 2014, on the file of the Motor Accident Claims Tribunal (Subordinate Court, Arani), Tiruvannamalai District, claiming compensation of Rs.10,00,000/- against the driver and owner of the said Tractor stating that he is a India-



Tibet Border Security Force Police and he is the main earning member in his family and due to the accidental injuries, he could not meet out is day to day needs.

5. In order to substantiate the claim, on the side of the claimant, the claimant was examined as P.W.1 and 5 documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondents, no oral and documentary evidence were let in.

6. The Tribunal after hearing the arguments and considering the materials, awarded compensation of Rs.1,70,000/- with proportionate cost and interest at 7.5% and directed the 2nd respondent/owner of the Tractor to pay the compensation.

7. Challenging the quantum of Award, the claimant has filed the present appeal.

8. The learned counsel for the appellant/claimant submitted that due to the accident, the appellant/claimant sustained fractures in the right



hand and right leg and the Tribunal failed to consider the nature of injuries and awarded only Rs.10,000/- towards pain and sufferings. At the time of accident, the claimant was aged 29 years and was working as India-Tibet Border Security Force Police. But no compensation was awarded towards loss of earning and future prospects was also not considered and the compensation awarded under the other heads also are on the lower side. Hence, the Award passed by the Tribunal does not reflect the "just compensation" and the same may be enhanced.

9. Though notice were served to the respondents, there is no representation on behalf of the respondents.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. As far as liability is concern, a perusal of records shows that the accident had happened due to the rash and negligent driving of the driver of Tractor. There is no evidence to shows that the accident had happened due to the rash and negligent riding of the rider of the two wheeler namely the



appellant herein. FIR was also registered against the driver of the Tractor. In the absence of the any contra evidence, the Tribunal rightly held that the accident happened only due to the rash and negligent driving of the driver of the Tractor. However, since the Tractor was not insured with any Insurance Companies, the Tribunal has fixed the liability on the owner of the Tractor/the 2nd respondent herein. The said findings has not been challenged by the respondents who are the driver and owner of the said Tractor.

12. As far as quantum is concerned, though the appellant/claimant submitted that at the time of accident he was working as a police and no award was passed under the head of loss of earnings, he has not produced any material to show that due to the accident, he lost income or he was on leave on loss of pay. In the absence of any material to prove the loss of income, with the available materials, the Tribunal has rightly appreciated the evidence and awarded Rs.1,50,000/- for the grievous injuries sustained by him and Rs.10,000/- towards pain and sufferings and Rs.5,000/- each towards Extra Nourishment and Transport Charges. Therefore, there is no perversity in the Award passed by the Tribunal.

13. Further, it is seen that the appellant/claimant has not



produced any medical bills. Most probably, he might have claimed the same from his department and therefore, he has not produced the same.

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14. This Court also from the available material finds, that the Award passed by the Tribunal is a "just compensation" and there is no perversity in the appreciation of evidence by the Tribunal. There is no material to enhance the compensation. There is no merit in the appeal and the same is liable to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed.

No costs.

14.09.2023
(2/2)

ksa-2
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No



C.M.A. No.245 of 20



To

1.The Motor Accident Claims Tribunal
(Subordinate Court, Arani), Tiruvannamalai District.

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



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C.M.A. No.245 of 2018



P.VELMURUGAN. J.

ksa-2

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14.09.2023
(2/2)