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C.M.A. No. 2464 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2464 of 2021

Arunachalam

... Appellant / Petitioner

Vs.

1. Sivakumar

2. The National Insurance Co. Ltd.,
2nd Floor, 81-D, North Car Street,
Tiruchengode Town & Taluk,
Namakkal District.

3. The National Insurance Co. Ltd.,
Branch Office 1272-1273,
Palaniappa Complex,
Mettur Road, Erode - 638 011.

... Respondents /

Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 07.04.2020 made in M.A.C.T.O.P. No. 196 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

For Appellant : Mr. C. Paraneedharan

For R2 and R3 : Mr. D. Bhaskaran



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant against the Judgment and decree made in M.A.C.T.O.P. No. 196 of 2018, dated 07.04.2020 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode, wherein the Tribunal has awarded compensation for a sum of Rs.1,46,105/- along with interest @ 9% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimants is that on 05.08.2017 at about 09:30PM, the claimant was riding a Honda CB Shine two wheeler bearing Registration No.TN-34-X-3958 on Tiruchengode to Veppadai Main Road, while he reached near Devanankurichi palam medu, at that time, a Yamaha SZ RR two wheeler bearing Registration No.TN-34-V-1452 came in the opposite direction in rash and negligent manner, hit on the two wheeler of the claimant, thereby causing grievous injuries to the claimant. A criminal case was also registered against the rider of the Yamaha two wheeler in



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Cr.No.457/2017 U/s. 279, 338 of I.P.C on the file of Tiruchengode Rural Police Station, Namakkal District. Due to the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 of Motor Vehicles Act.

4. The first respondent is the owner of the Yamaha SZ RR two wheeler bearing Registration No.TN-34-V-1452 and the second and third respondents are the insurer and branch office of the insurance company respectively of the above Yamaha two wheeler have not contested the claim and remained ex-parte.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.13 and also Ex.C.1 - disability certificate issued by the Medical Board were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the rider of the



Yamaha SZ RR two wheeler bearing Registration No.TN-34-V-1452 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.1,46,105/- along with interest @ 9% per annum from the date of filing of petition till the date of realization. In point no.3, the Tribunal has fixed the liability on the second respondent - insurance company, who is the insurer of the Yamaha SZ RR two wheeler bearing Registration No.TN-34-V-1452 to pay the compensation to the claimant.

7. Aggrieved over the quantum of compensation, the claimant has filed this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly appreciated the nature of injuries sustained by the claimant during the accident and also submitted that the medical board has assessed the disability of the claimant as 3% Permanent disability and the same has reduced the earning capacity of the claimant, but the Tribunal has awarded meagre compensation under the head disability. The learned counsel also submitted that the compensation awarded under



various heads are on the lower side, hence prays to enhance the compensation.

9. Per contra, the learned counsel Mr. D. Bhaskaran, appearing for the second and third respondent - insurance companies has submitted that the Tribunal based on the evidence placed on record, more particularly the disability fixed by the medical board based on the assessment of the claimant has awarded a just compensation under various heads, hence prays to confirm the award of the Tribunal.

10. Heard the submissions made on both sides and perused the materials available on record:

11. The Ex.C.1 - disability certificate issued by the Medical Board of the Perundurai Medical College shows that the claimant has sustained 2% locomotor disability and 1% with regard to dental injury, hence totally the claimant has sustained 3% permanent disability. The Ex.P.2 and Ex.P.3, wound certificate and discharge summary respectively shows that the claimant has sustained fracture base of left 3rd and Head of 5th Metacarpals



with fracture left maxilla and left orbit. On perusal of the above record, the Tribunal has treated the above injuries sustained by the claimant is not a functional permanent disability and the percentage of disability assessed by the Medical Board is proper and awarded compensation of Rs.5,000/- per percentage of disability and granted Rs.15,000/- as compensation under the head disability, by rightly following the norms of this Court judgment in ***Chinnathambi vs. S. Deepa and one another*** reported in **[2020 (A) TN MAC 617]**. Hence, this Court finds no infirmity in awarding compensation under the head disability.

12. On perusal of the compensation awarded by the Tribunal under other heads are concerned, the Tribunal has awarded Rs.45,000/- towards pain and suffering, Rs.10,000/- for attender charges, Rs.5,000/- each towards transportation expenses and extra nourishment, Rs. 26,105/- towards medical expenses and Rs.40,000/- towards temporary loss of income, hence this Court is of the view that the Tribunal has awarded a very reasonable compensation under various heads and there is no scope for this Court for enhancing the same. Accordingly, this Court confirms the award of the Tribunal.



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13. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. No costs.

14.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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