



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.949 of 2021

Mohammed Hanifa

.. Appellant

Vs.

1. A.K.Shanmugandam

2. Reliance General Insurance Company Ltd.,
No.6, Hadows Road, Reliance House,
Nungambakkam, Chennai.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance and set aside the award dated 13.09.2019 in MACTOP. No.3295 of 2015 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mrs.A.Subadra

For R1 : NDW

For R2 : Mr.P.Suresh Srinivasan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to enhance the award dated 13.09.2019 in MACTOP. No.3295 of 2015 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.



2.The appellant is the claimant, who filed M.C.O.P.No.3295 of 2015, on the file of the Motor Accidents Claims Tribunal/VI Court of Small Causes, Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him due to the accident that took place on 04.02.2015.

3. Before the Tribunal, during trial, in order to prove the case of the claimant, he has examined three witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Exs.P1 to P12. On the side of the respondents, no witness was examined and no document was marked.

4.The Tribunal considering the pleadings, oral and documentary evidence, awarded a sum of Rs.7,87,782.50/-to the claimant as compensation and fixed 50% negligence on the claimant. Therefore, the respondents were directed to pay the remaining 50% compensation to the claimant.

5.Not satisfied with the quantum of compensation, the appellant/claimant has come out with this appeal for enhancement.

5.The learned counsel appearing for the appellant contended that due to



the accident the appellant's both bones in right and left legs were fractured and she sustained grievous injuries in all over the body, for which he has suffered permanent disability and he could not able to do her work properly. Before the accident, the appellant was earning a sum of Rs.15,000/- per month in the year 2015 whereas the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the injured claimant, which is unsustainable. The Tribunal has awarded very meager compensation towards pain and sufferings, transportation and extra nourishment and the Tribunal has not awarded any compensation in respect of damages to clothes and articles. Hence, the appellant prays to enhance the compensation awarded by the Tribunal.

6. Per contra, learned counsel appearing for the second respondent/insurance company submitted that after considering all the materials, the Tribunal awarded compensation to the claimant for the injuries sustained by him, which does not require any enhancement. The entire allegation of the appellant is not true. To get a large amount of compensation, he has filed this case. However, he prays for dismissing the appeal.



7. Heard the learned counsel for the appellant as well as the second respondent and also perused the materials available on record.

8. The appellant is the claimant, first respondent is the owner of the vehicle and the second respondent is the Insurance Company. The case of the appellant is that on 04.02.2015 at about 3.30 P.M., when the appellant was driving Auto Rickshaw bearing Reg. No.TN 10 2810 at a place in ECR road, a car bearing Reg. No.PY 01 BJ 1166 driven by its driver in a very rash and negligent manner came from Pondicherry to Chennai direction and dashed against the appellant. Thereby, the appellant sustained grievous injuries. The accident occurred only due to rash and negligent driving by the driver of the car bearing Reg. No.PY 01 BJ 1166.

9. On perusal of the AR copy, it is seen that the appellant was under the influence of Alcohol and therefore, the Tribunal has rightly fixed 50% negligence on the part of the appellant, which cannot be interfered with. Further, the appellant has produced the driving license and he has not produced his income certificate and therefore, as per the decision of the Hon'ble Apex Court, this Tribunal has fixed a sum of Rs.9000/- as notional



income, which is perfectly in order. Further, the appellant has not appeared before the medical board for assess the disability whereas he has examined PW2 who is the retired Doctor, who is working in Kilpauk Medical College Hospital in Ortho Department and the said Doctor has assessed the disability at 60% as partial permanent. But the disability certificate was not issued as per Rule 4 of the Persons with Disability Act. Admittedly the appellant has undergone surgery for his legs. Hence, the Tribunal has fixed the disability at 40% and awarded a sum of Rs.6,91,200/- towards disability, which is just and reasonable and the same does not warrant any interference. The other heads awarded to the appellant is also perfectly in order. The Tribunal, considering these fact, awarded a sum of Rs.7,87,782.50/- to the claimant and fixed 50% negligence on him. The Tribunal has given valid and cogent reason for awarding the said claim as compensation, which is just and reasonable and there is no reason to interfere with the said finding given by the Tribunal.

10.In the result, the Civil Miscellaneous Appeal is dismissed and the awarded passed by the Tribunal is confirmed. No costs.

20.12.2023



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6

M.DHANDAPANI.,J.

rli

Index : Yes / No
Speaking Order : Yes/ No

rli

To

The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

C.M.A.No.949 of 2021

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