



C.M.A.No.2348 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2348 of 2017

K.R.Nagarajan

... Appellant/Petitioner

Vs

1.PNK SRT Travels

No.372, Dharapuram Road,
Tirupur-641 008.

2.United India Insurance Co.Ltd.,

Siling Building,
No.134, Greams Road,
Chennai-600 006.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the impugned award passed on 05.11.2016 by the Learned III Judge, Small Causes court (Motor Accident Claim Tribunal), Chennai in MCOP No.5201/2011.



C.M.A.No.2348 of 2017

For Appellant ... M/s.A.Shanmugaraj
For Respondents ... Ex-parte [R1]
... Mr.Michael Visuvasam [R2]

JUDGEMENT

Aggrieved by the impugned award dated 05.11.2016 passed by the Learned III Judge, Small Causes court (Motor Accident Claim Tribunal), Chennai in MCOP No.5201/2011, the present appeal has been filed by the claimant/appellant seeking enhancement of compensation.

2. On 14.12.2009, the claimant was travelling as a passenger in the private bus bearing Reg.No.TN 39 AP 7997 proceeding towards Konnerikuppam. The said bus was driven by its driver in a rash and negligent manner and when the driver had applied the sudden brake, the bus had fallen down in a Pallam thereby the petitioner sustained grievous injuries resulting in the burst fracture in the back bone. Thereby, the claimant has filed a petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him, under various heads before the Motor Accidents Claims Tribunal, III



C.M.A.No.2348 of 2017

Court of Small Causes, Chennai. After considering all the oral and documentary evidences, the Tribunal had awarded a sum of Rs.4,31,500/- as compensation to the claimant. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/claimant is before this Court seeking enhancement of compensation.

3. Learned counsel appearing for the petitioner submitted that though the Tribunal has accepted that the bus which was driven by its driver in a rash and negligent manner was the cause for the accident, the compensation awarded by the Tribunal is grossly inadequate. At the time of accident, the claimant was earning a sum of Rs.1,00,000/- per month and his income is affected during the period in which he was under treatment which was purely on account of the said accident. When the Doctor, P.W.2 has assessed 65% disability, the Tribunal has taken only 40% disability and has awarded the compensation under the head 'Disability' by adopting Rs.3,000/- per percentage which is wholly inadequate. Further, the compensation awarded under the heads is also minimal which requires enhancement. Accordingly, he prayed for enhancement of compensation awarded by the Tribunal.



C.M.A.No.2348 of 2017

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4. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that though it is the claim of the petitioner that he was earning a sum of Rs.1,00,000/- per month, no proof of income has been produced by the petitioner in order to substantiate the said claim. In the absence of any proof, the petitioner cannot seek any compensation under the said head 'Loss of Income'. Insofar as the compensation awarded under the head 'Disability', the Tribunal has rightly fixed the compensation by fixing 40% disability which requires no enhancement. Further, the compensation awarded under the other heads are just and reasonable and the award of the Tribunal does not require any interference.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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6. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. It is the claim of the petitioner that the compensation of Rs.1,20,000/- awarded under the head 'Disability' is on the lower Court. In this regard, this Court had perused the disability certificate viz., Ex.P20 issued by the Doctor P.W.5 and also the evidence of P.W.2, Doctor, both of whom have given contra opinion by fixing the disability at 20% and 65% respectively. Therefore, to strike a balance, the Tribunal has fixed the disability at 40%, even though the materials do not substantiate the same, which disability has been fixed based on the expert opinion given by the doctors. After perusing the disability certificate and also the injuries sustained by the petitioner, this Court is of the opinion that the compensation awarded by the Tribunal under the head 'Disability' by appreciating the evidence of the doctor, has rightly fixed a sum of Rs.3000/- per percentage after reducing the disability to 40%, which is fairly adequate and by no stretch could be said to be inadequate and, therefore, the same requires no enhancement. Insofar as



C.M.A.No.2348 of 2017

the claim of compensation under the head of 'Loss of Income' at Rs.1,66,250/-, this Court is not inclined to interfere with the compensation awarded under the said head as it is evident from the materials available on record that the petitioner has not produced any proof with regard to his monthly income. In the absence of any proof, the petitioner cannot seek enhancement of compensation under the head 'Loss of Income'.

7. Further, the Tribunal has awarded a sum of Rs.3,250/- towards attender charges; Rs.10,000/- towards Transport to Hospital; Rs.20,000/- towards Extra nourishment; Rs.1,000/- towards Damage to clothing; Rs.36,000/- towards Physiotherapy bills; Rs.25,000/- towards Medical expenses; Rs.40,000/- towards Pain and suffering and Rs.10,000/- towards Damages for Mental and physical shock. This is Court finds that the compensation awarded under above heads are also just and reasonable and the appeal is liable to be dismissed.



C.M.A.No.2348 of 2017

WEB COPY

8. Accordingly, the Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 05.11.2016 made in M.C.O.P.No.5201 of 2011 on the file of the Learned III Judge, Small Causes court (Motor Accident Claim Tribunal), Chennai stands confirmed. There shall be no order as to costs.

10.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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To

1. Learned III Judge,
Small Causes court (Motor Accident Claim Tribunal),
Chennai
2. The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.No.2348 of 2017

M.DHANDAPANI, J

NHS

C.M.A.No.2348 of 2017

10.10.2023