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CMA.No.2613 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2613 of 2017

Selvakumar

Appellant

Vs

1. D.Natarajan
2. Vivekanandan
3. P.Selvalakshmi

4. The New India Assurance Company Limited
Coimbatore-2

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 27.02.2004, made in MCOP.No.623 of 2002, by the Additional Sub Court (MACT) Coimbatore.

For Appellant : Mr.E.D.Sethupathi

For Respondents : Mr.G.Anandan-R4

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 27.02.2004, made in MCOP.No.623 of 2002, by the Additional Sub Court (MACT) Coimbatore.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.1,50,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 08.02.2001. The 1st Respondent herein/driver, 2nd Respondent/conductor and the 3rd Respondent/owner of the offending bus remained exparte. The claim



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petition was resisted, on various grounds, by the 4th Respondent/ Insurance Company, by filing a counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P8 were marked.

3. Finding that the accident had occurred due to the negligent acts of both the claimant and the Respondents 1 and 2 and apportioning contributory negligence 50% on the claimant and 50% on the Respondents 1 and 2, the Tribunal has awarded a total compensation of Rs.47,510/- with interest at 9% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Injuries	15000
2	Pain and Suffering	15000
3	Medical Expenses	13910
4	Extra Nourishment	1500
5	Damage to Clothes	100
6	Loss of Income	2000
Total Compensation		47510

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

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. In so far as the quantum of compensation is concerned, considering the



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nature of injuries suffered by the claimant on his both hands, the compensation of Rs.15,000/- for the injuries awarded by the Tribunal is enhanced to Rs.20,000/-. The compensation of Rs.1,500/- towards extra nourishment and Rs.100/- towards damages to clothes awarded by the Tribunal are enhanced to Rs.2,500/- and Rs.500/-, respectively. The compensation awarded under other heads are confirmed. In all, the claimant is entitled to a total compensation of Rs.53,910/- with interest at 7.5% p.a. from the date of the petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Injuries	20000
2	Pain and Suffering	15000
3	Medical Expenses	13190
4	Extra Nourishment	2500
5	Damage to Clothes	500
6	Loss of Income	2000
Total Compensation		53190

7. However, with regard to the contributory negligence, the Petitioner and the 2nd Respondent are the conductors of the offending Bus and the 3rd Respondent is the owner. The 1st Respondent is the driver of the bus. When the claimant was doing repair works under the bus, on the signal given by the 2nd Respondent, the driver suddenly took the bus, due to which, the bus ran over the hands of the claimant, due to which he sustained injuries on his both hands. Hence, just proper contributory negligence that could be fixed on the claimant would be 25% and 75% contributory negligence is fixed on the Respondents 1 and 2. Thus, the compensation payable to the claimant would come to Rs.39,892.50/- (75% of Rs.53,190/-), which is rounded off to



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Rs.39,900/-.

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8. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.39,900/- (Rupees thirty nine thousand nine hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation. The 4th 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 already, deposited, 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 same, by filing proper application. No costs.

17.04.2023

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

To

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



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A.A.NAKKIRAN, J.

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