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CMA.No.871 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.871 of 2017

V.Elijah

Appellant

Vs

1. C.Selvam

2. ICICI Lombard General Insurance Company Limited
Chennai-34

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 18.11.2014, made in MCOP.No.5889 of 2012, by the V Small Causes Court (MACT) Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.M.Jayaraj-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 18.11.2014, made in MCOP.No.5889 of 2012, by the V Small Causes Court (MACT) Chennai.
2. The Appellant has filed the claim petition before the Tribunal, seeking a compensation of Rs.6,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 31.07.2012, when he was crossing the road by walk, he was hit by the offending autorickshaw, driven by the 2nd Respondent rashly. The 2nd Respondent/owner cum driver of the offending vehicle remained exparte. The claim petition was



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resisted, on various grounds, by the 2nd Respondent Insurance Company, by filing a separate counter. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P6 were marked.

3. Finding that at the time of the accident, the claimant was under the influence of alcohol and that the claimant sustained the injuries in the alleged motor road accident due to the rash and negligent driving of both the claimant and the driver of the offending vehicle, the Tribunal has apportioned the liability in the ratio of 50%:50% on the claimant and the Insurance Company respectively and arrived at a total compensation of Rs.2,10,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Transportation, Nutrition and Damages to Clothes	25000.00
2	Attendants Charges	5000.00
3	Medical Expenses	5000.00
4	Disability (40%x2000)	80000.00
5	Loss of Income	45000.00
6	Pain and Suffering	25000.00
7	Loss of Amenities	25000.00
Total Compensation		210000.00

Aggrieved by the same, this appeal has been filed by the claimant.

4. According to the learned counsel for the Appellant, since the claimant suffered fracture of right ankle and 40% disability, the Tribunal ought to have awarded more compensation per percentage under the head of disability and the apportionment of liability in the ratio of 50:50 on the claimant and the Insurance Company fixed by the Tribunal is not proper. According to the learned counsel for the 2nd Respondent, the impugned award of



compensation is just and proper.

5. As per the medical records, the claimant suffered fracture of right ankle and the Tribunal having found that the claimant suffered 40% disability as per the evidence of PW.2 and other medical records, it ought to have fixed more amount per percentage under the head of disability. Hence, it would be appropriate to fix Rs.3000/- per percentage under the head of disability. Thus, a sum of Rs.1,20,000/- (Rs.3000 per percentage - Rs.3000x40) is hereby awarded under the head of disability. The compensation awarded by the Tribunal under the other heads are confirmed. In all, the total compensation is arrived at Rs.2,50,000/- (Rupees two lakhs fifty thousand only).

6. In so far as the contributory negligence is concerned, merely relying on Ex.P2 Accident Register, the Tribunal, finding that there was breath of smell of alcohol from the claimant at the time of the accident, apportioned 50% liability on the claimant. The author of Ex.P2 was not examined. It is only a breath of smell of alcohol and regular blood test was not done. Mere smell of alcohol in the breath of the claimant cannot be taken as a proof to hold that the claimant is also responsible for the accident. There should be concrete evidence as to the manner, in which the accident has occurred due to the negligence of the claimant. Further, unless regular blood test, it cannot be assessed as to what extent he was under the influence of alcohol. Therefore, the Tribunal erred in apportioning liability in the ratio of 50%:50% on both the

A.A.NAKKIRAN, J.



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claimant and the Insurance Company. It would be appropriate to apportion 20% liability on the claimant and 80% liability on the Insurance Company.

7. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to 80% of the total compensation with interest as arrived at by this Court, namely, Rs.2,50,000/- (Rupees two lakhs fifty thousand only). The 2nd Respondent Insurance Company is directed to deposit 80% of the compensation, arrived at by this Court, with interest at 7.5% p.a. from the date of the petition till the date 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 permitted to withdraw the same, by filing appropriate application. No costs.

13.06.2023

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

1. V Small Causes Court (MACT) Chennai.
2. The Record Keeper, VR Section, High Court, Madras

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