



C.M.A.(MD).No.271 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.271 of 2018

B.Kalidoss

.....Appellant/ Petitioner

-VS-

1. V.Subramaniam

2. The United India Insurance Company Ltd.,
Represented by its Branch Manager,
No.14/1-77B,
Salem Main Road,
Pudhuchampalli,
Mettur Dam.

3. V.Ashokan

.... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 28.08.2017 made in M.C.O.P.No. 1951 of 2017, on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge), Tiruchirappalli.

For Appellant : Mrs.J.Maria Roseline

For Respondents : Mr.B.Rajeshsaranan – for R2
: No appearance – for R1 and R3



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the injured claimant challenging the award passed by the Motor Accident Claims Tribunal, (Special Subordinate Judge), Tiruchirappalli, seeking enhancement of compensation.

2. According to the claimant, he was aged about 61 years and he was employed in a Private Finance Company and drawing a salary of Rs.23,510/- (Rupees Twenty Three Thousand Five Hundred and Ten only). On 25.10.2009, at about 4.45 p.m, when the petitioner was driving his Scooter from east to west direction, the lorry, owned by the first respondent and driven by the third respondent, came in a rash and negligent manner and dashed against the Scooter. The petitioner sustained grievous injuries and he was admitted in the hospital. According to the claimant, he has sustained permanent disability in his right leg and he has also undergone a hip replacement surgery. Hence, he prayed for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards compensation.



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3. The owner of the Lorry had remained ex-parte and the Insurance Company had filed a counter contending that the driver of the lorry was not having a valid driving licence at the relevant point of time. They have further contended that only the injured claimant had driven his two wheeler in a careless and negligent manner, lost his control and knocked down himself on the left rear side mudguard of the lorry and thereby invited the alleged mishap. The Insurance Company has also questioned the medical records and the quantum of compensation sought for by the claimant.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the petitioner has sustained injuries only due to the rash and negligent driving of the third respondent. The Tribunal further found that the vehicle belonging to the first respondent was insured with the second respondent. Based upon Ex.P.6- first respondent's driving license, the Tribunal arrived at a finding that the Lorry driver was having a valid driving license at the relevant point of time. Based upon the same, the Tribunal came to a conclusion that the award amount has to be satisfied by the Insurance Company.



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5. The Tribunal, after considering Ex.P.22 and Ex.P.27- Disability Certificates and the evidence of P.W.3- Doctor, arrived at a conclusion that the claimant has sustained only 35% of disability and fixed a a sum of Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) towards such disability; for loss of income, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded; for pain and sufferings, a sum of Rs.50,000/- (Rupees Fifty Thousand only) was awarded; for extra nourishment, a sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded; for damages for cloths and other articles, a sum of Rs.1,000/- (Rupees Thousand only) was awarded; for Transport expenses, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded and for Past Medical Expenses, a sum of Rs.3,37,270/- (Rupees Three Lakhs Thirty Seven Thousand Two Hundred and Seventy only) was awarded. Finally, the total award amount was arrived at Rs.5,33,270/- (Rupees Five Lakhs Thirty Three Thousand Two Hundred and Seventy only). The Tribunal has directed the Insurance Company to pay the award amount to the petitioner. This award is under challenge by the claimant seeking enhancement of compensation.



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6. According to the learned counsel appearing for the appellant, as per Ex.P.27- Disability Certificate, the Doctor has arrived at disability of 64%, however, the Tribunal, without assigning any reason, has fixed the disability at 35%. The learned counsel appearing for the appellant had further contended that the injured was working in a private concerned and he had not attended duty for 149 days and therefore, there was loss of income due to the accident. The learned counsel appearing for the appellant, by relying upon Ex.P.27, had contended that no amount has been awarded for future medical treatment. She further contended that considering the fact that there is a locomotive disability in the right leg and the petitioner had undergone hip replacement surgery, the tribunal ought to have awarded a compensation under the head of loss of amenities. She further contended that the claimant was an inpatient for 35 days and therefore, attender charges should have been awarded by the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent had contended that Ex.P.27 – disability certificate has been issued by the



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Doctor, who has not given initial treatment to the claimant. Therefore, the certificate was not believed by the Tribunal and the percentage of disability was reduced from 64% to 35%. Unless the claimant appears before the Medical Board and establishes the correct percentage of disability, the Tribunal cannot be found fault with for fixing the disability at 35%. Therefore, according to the learned counsel for the appellant, the Tribunal was right in reducing the percentage of the disability from that of the disability certified by the Doctor.

8. The learned counsel for the second respondent had further contended that there is no proof that the claimant had not attended duty and he has suffered loss of income for 149 days. Similarly, there are no records to establish that the claimant would incur certain amount for medical treatment in future. Hence, he prayed for sustaining the award passed by the Tribunal.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the records.

10. The primary contention of the learned counsel for the appellant is



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that the Tribunal ought not to have reduced the percentage of disability certified by the Doctor, who was examined as P.W.3. The Tribunal in Paragraph No.2 under the head of disability has reduced the percentage of the disability from 64% to 35% in consideration of the nature of injuries and on the ground that the Doctor has not placed details of assessment of disability. Once the medical practitioner has issued a certificate of disability referring to certain percentage of the disability said to have been sustained by the claimant, the Court will be empowered to reduce the said disability only under extraordinary circumstances. In the present case, the Doctor, who issued the disability certificate, has been examined as P.W.3 and nothing has been brought out during his cross-examination, so that, the Tribunal could arrive at a finding to reduce the percentage of the certificate. The Court is not an expert in assessing the percentage of the disability. Once the Doctor was examined and he was cross-examined by the counsel for the Insurance Company and nothing has brought out in his cross-examination, thereafter, the Court cannot interfere in the said certificate and reduce the percentage of disability. Therefore, this Court is of the view that the Certificate of the Doctor for 64% of the disability has to be sustained. Considering the fact that each percentage of disability, a sum of Rs.3,000/- could be awarded and



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therefore, the total compensation under the head of partial permanent disability would be at Rs.1,92,000/- (Rupees One Lakh Ninety Two Thousand only).

11. It could be seen from Ex.P.7- K.M.C Hospital Discharge Summary, that the claimant was admitted on 25.10.2009 and he was discharged on 20.11.2009. A perusal of Ex.P.21 discloses that the claimant was again admitted in the Hospital on 14.07.2010 and he was discharged on 20.07.2010. A perusal of Ex.P-22 reveals that the claimant was admitted on 11.12.2009 and he was discharged on 14.12.2009. Therefore, it is clear that the claimant was an inpatient for 35 days. Hence, he is entitled for a sum of Rs.10,000/- (Rupees Ten Thousand only) towards attender charges.

12. The evidence of P.W.2, who is the employer would reveal that the petitioner had not attended duty for 149 days. Out of the said 149 days, he was on loss of pay for 128 days. The Tribunal, has awarded a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of income for the said period. The learned counsel appearing for the appellant had contended



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that the Tribunal has taken monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only), based upon Ex.P.24, which is the appointment order. However, the salary bill for the month of September 2009 indicates that the net salary was Rs.23,560/- (Rupees Twenty Three Thousand Five Hundred and Sixty only). The accident had taken place on 25.10.2009. Therefore, it is clear that on the date of accident, the claimant was receiving the net salary of Rs.23,560/- (Rupees Twenty Three Thousand Five Hundred and Sixty only). Therefore, this Court is inclined to take the claimant's salary at Rs.23,000/- (Rupees Twenty Three Thousand only) per month and award a sum of Rs.92,000/- (Rupees Ninety Two Thousand only) towards loss of income.

13. The Doctor who was examined as P.W.3, has categorically pointed out that the plates and screws have been implanted at the time of hip replacement surgery and the claimant would have to undergo a second surgery for removal of the same and he would incur an expenses of Rs.45,000/- (Rupees Forty Five thousand only). The said aspect has not been considered by the Tribunal and no amount has been awarded. Therefore, this Court is inclined to award a sum of Rs.40,000/- (Rupees Forty Thousand



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only) towards future medical expenses.

14. It is an admitted fact that the claimant has undergone right hip replacement surgery and also sustained locomotive disability in the right leg and sustained fracture in both the legs and there is proper union of fracture after treatment. However, due to insertion of the plates and screws, he would not be in a position to sit and walk. Therefore, it is clear that the claimant would be entitled to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards loss of amenities. The claimant was admitted in the hospital as an inpatient for 35 days and therefore a sum of Rs.10,000/- (Rupees Ten Thousand only) could be awarded towards attender charges.

15. In view of the above said deliberations, the award of the Tribunal is modified as follows:

Loss of Income	: Rs. 92,000/-
Disability	: Rs.1,92,000/-
Pain and Sufferings	: Rs. 50,000/-
Extra Nourishment	: Rs. 10,000/-
Damages for Cloth	: Rs. 1,000/-
Transport Expenses	:Rs . 15,000-



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Past Medical Expenses	: Rs. 3,37,270/-
Future Medical Expenses	: Rs. 40,000/-
Loss of Amenities	: Rs. 25,000/-
Attender Charges	: <u>Rs. 10,000/-</u>
Total	: Rs. 7,72,270/-

16. Therefore the award of the Tribunal is enhanced from a sum of Rs.5,33,270/- (Rupees Five Lakhs Thirty Three Thousand Two Hundred and Seventy only) to Rs.7,72,270/-(Rupees Seven Lakhs Seventy Two Thousand Two Hundred and Seventy only) and the said amount will carry interest at the rate of 7.5% per annum from the date of claim petition. The Insurance Company is directed to deposit the said amount within a period of eight weeks from the date of receipt of a copy of this order.

17. Accordingly, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

26.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
(Special Subordinate Judge),
Tiruchirappalli.
2. The United India Insurance Company Ltd.,
Represented by its Branch Manager,
No.14/1-77B, Salem Main Road,
Pudhuchampally, Mettur Dam.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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