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C.M.A. No. 1920 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1920 of 2021

Periyasamy

... Appellant / Petitioner

Vs.

1. Sethuraman

3. The United India Insurance Co. Ltd.,
D.No.167-D, Attur Main Road,
Venkateshwara Theatre Bus Stop,
Gangavalli, Salem - 636 105.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 29.01.2021 passed in M.C.O.P. No. 1592 of 2019 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : M/s. C. Paraneedharan

For R1 : No Appearance

For R2 : M/s. J. Chandran



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 1592 of 2019, dated 29.01.2021 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 04.06.2019, at about 11:30PM, the claimant was sleeping in the portico of the Gangavalli Arokia Maatha Christian Hospital, a Hyundai Santro car bearing Registration No.TN-31-K-4559 driven by its driver in a rash and negligence manner, had ran over the claimant and caused grievous injuries to the claimant. A criminal case was registered against the the driver of the car in Cr.No.62/2019 U/s.279 and 337 of IPC on the file of Gangavalli Police Station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166 of the Motor Vehicles Act, 1988.



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4. The first respondent is the owner of the offending car filed a counter and disputed the age, occupation, income, injuries sustained and disability of the claimant and contended that accident has happened only due to the rash and negligence on the part of the claimant, who was under the influence of alcohol, invited accident. He further submitted that the driver of the car has a valid driving licence and the insurance policy of the car was in force at the time of occurrence, hence, the second respondent - insurance company is liable to pay any compensation awarded.

5. The second respondent - insurance company filed a counter and disputed the manner in which the accident has taken place and contended that the accident was happened only due to the negligence on the part of the claimant, who without noticing the on coming car and suddenly entered before it and invited the accident. The insurance company also disputed the age, income, occupation, treatment undergone and disability sustained by the claimant and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.



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6. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.20 and Ex.X.1 - disability certificate of the claimant issued by the Salem Medical Board were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the car bearing Registration No.TN-31-K-4559 is responsible for the accident. In point nos. 2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.5,56,118/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization and fixed the liability on the part of the insurance company to indemnify the first respondent and to pay compensation to the claimant.

8. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.

9. The learned counsel appearing for the claimant submitted



that, Tribunal has not properly considered the nature of injuries sustained and the disability of the claimant and awarded compensation by adopting percentage method instead of granting compensation under loss of earning capacity. He also further submitted that the compensation awarded under various other heads are on the lower side, hence prays to enhance the compensation.

10. Per contra, the learned counsel appearing for the insurance company submitted that based on the evidences placed on record, the Tribunal has awarded a just compensation, hence prays to confirm the award.

11. I have heard the submissions made on both sides and perused the materials placed on record.

12. The major contention raised by the claimant is that he sustained grievous injuries and fractures, so he could not continue his earlier avocation, hence prays to grant compensation under the head loss of earning capacity.



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13. Ex.P.5 – Wound certificate and Ex.P.6 – discharge summary shows that the claimant has sustained following injuries: “Left 6th RIB Fracture, Right 7th, 8th RIB Fracture with Right Hemothorax, Degloving injury over chest and abdomen and Fracture on Right Lateral End Clavicle” and the above injuries have been treated conservatively in the hospital. Ex.X.1 – disability certificate of the claimant issued by the Salem Medical Board shows that the claimant has sustained 45% permanent disability and recorded that the claimant has sustained fractures in 6th, 7th and 8th Ribs and fracture in the right shoulder, hence there is a restriction in the movement of his shoulder and chest area. The Tribunal after appreciating the disability report of the Medical Board has held that the claimant has sustained non functional disability and awarded compensation Rs.2,25,000/- by adopting percentage method by granting Rs.5,000/- per percentage of disability. Considering the age of the claimant, year of accident, nature of injuries and the Medical Board report, this Court is of the view that the Tribunal has properly awarded compensation under the head disability, hence this Court is inclined to confirm the same.



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14. Considering the nature of injuries and period of treatment, the Tribunal has awarded Rs.50,000/- each under the head pain and suffering and loss of amenities, Rs.60,000/- towards loss of income during the treatment period of the claimant. Whereas the other heads are concerned the Tribunal has awarded a just compensation and this Court is of the view that the appeal filed by the claimant has no merits, hence, inclined to confirm the award of the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. No cost.

02.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Special Subordinate Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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