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C.M.A.No.2030 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2030 of 2024

S. Mugilan

... Appellant

Vs.

1. D.Codandabany @ Elumalai

2. The Manager,
The New India Assurance Company Limited,
Motor Third Party Cell,
Bombay Mutual Buildings,
6th Floor, No.232, N.S.C.Bose Road,
Chennai - 600 001.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 31.01.2023 made in M.C.O.P.No.3163 of 2017 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.



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For Appellant : Mr.K. Varadha Kamaraj
For 2nd Respondent : Mr.R.Sivakumar
for Mr.G.Sekar Mari

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JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

The appellant/claimant, has filed this appeal against the award dated 31.01.2023 passed in M.C.O.P.No.3163 of 2017 on the file of the the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

2.The case in brief, is as follows:

On the fateful day, i.e. on 02.04.2017 at about 16:15 hours, while the petitioner was riding a motor cycle bearing Registration No.PY-01-BL-4389 proceeding from North to South at left side of the Puducherry - Gingee Road, near Canara Bank, Puducherry, at the time a bus bearing Registration No.PY-01-U-1112 driven by its driver in a very rash and negligent manner and endangering the public safety came from behind and hit the above-said motor cycle. Due to the impact, the appellant herein sustained multiple and grievous injuries. The appellant/claimant



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has filed a claim petition before the Tribunal seeking compensation of Rs.85,00,000/-.

3. The 1st respondent remained absent and thus, he was set *ex parte* before the Tribunal.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the first respondent Bus and awarded a total compensation of Rs.23,16,995/- along with 7.5% interest per annum from the date of the petition till the date of deposit and costs.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

6. The learned counsel for the appellant would state that the Tribunal failed to see disability certificate issued by the Doctor (P.W.2) and as per the disability certificate, the disability of the appellant is 49%, but, the Tribunal went wrong in not awarding any amount towards



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disability. The Tribunal ought to have awarded just compensation under the said head considering the expert evidence (P.W.2). He would further state that the Tribunal went wrong in not awarding any amount towards loss of earning power of the appellant, future medical expenses and loss of marriage prospects. He would further state that the Tribunal erred in fixing a sum of Rs.10,000/- as monthly income of the appellant. It is submitted that the Tribunal awarded a very meager amount of compensation towards pain and sufferings, loss of earnings of the appellant during the treatment period and loss of amenities.

7. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the alleged accident had taken place only due to rash and negligent driving of the rider of the Motor Cycle bearing Registration No.PY-01-BL-4389 proceeding from North to South and hit the Bus bearing Registration No.PY-01-U-1112 which was proceeding in the same direction on eastern side and caused the accident. The rider of the Motorcycle was only instrumental to the accident and hence, the Insurance Company is not liable to pay compensation. The appellant, having committed the accident, is not



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entitled to any compensation. Hence, he would pray to dismiss the appeal.

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8. Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and perused the entire materials available on record.

9. The appellant/claimant has filed this appeal mainly questioning the quantum of the award passed by the Tribunal.

10. Before the Tribunal, the injured/claimant examined himself as P.W.1. Dr.Saravanabhavanandhan and Dr.Balachandar were examined as P.W.2 and Exs.P1 to P22 were marked. On the side of the Insurance Company, Ms.Padmini, Assistant Manager was examined as R.W.1. and Exs.R1 to R4 were marked.

11. In so far as the contention of the learned counsel for the appellant that the Tribunal went wrong in not awarding any amount towards disability is concerned, the appellant has suffered crush injury



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with extensive degloving injury lower back/both gluteal region and posterolateral aspect of upper and middle third of right thigh, complete perineal tear with complete avulsion of anorectal complex, fracture of pelvis, severe head injury and multiple injuries all over the body. On reference to the Medical Board, the Doctors of the Medical Board has assessed that the petitioner had sustained 'Nil' disability. Hence, the Tribunal has not awarded any amount under the said-head, which in our opinion is fair and proper. In so far as the pain and sufferings is concerned, as per the disability certificate, the appellant had sustained Nil disability and as per the contents of the document under Ex.P3 to Ex.P5, he has taken treatment at SIMS from 03.04.2017 to 27.05.2017, 05.02.2018 to 07.02.2018 and 23.03.2018 to 28.03.2018. Hence, the Tribunal has awarded a sum of Rs.1,00,000/- towards pain and sufferings and this Court is not inclined to interfere with the same.

12. With regard to the contention of the learned counsel for the appellant that the Tribunal erred in fixing a sum of Rs.10,000/- as monthly income of the appellant is concerned, the appellant has not



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produced any document for the avocation and his income and hence, the Tribunal, relying upon the judgment of the Hon'ble Supreme Court in *Syed' Sadiq and Others Vs. Divisional Manager United India Insurance Company Limited* reported in **2014 (1) TNMAC 459**, fixed a sum of Rs.10,000/- per month and awarded a sum of Rs.30,000/- towards loss of earning during treatment, which in our opinion is just and reasonable.

13. Further, the amount awarded under other heads viz., a sum of Rs.1,00,000/- towards Loss of Amenities, a sum of Rs.20,000/- towards Attendant Charges, a sum of Rs.20,000/- towards Transportation Charges and a sum of Rs.20,000/- towards Extra Nourishment are just and fair compensation over which, we refuse to interfere.

14. We do not find any infirmity or illegality in the said findings of the Tribunal, warranting interference by this Court. Therefore, we are of the opinion that the award passed by the Tribunal has to be confirmed.

J. NISHA BANU, J.

and

R. SAKTHIVEL, J.

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15. In the result, the Civil Miscellaneous Appeal is dismissed. The decree and judgment passed by the Tribunal in M.C.O.P.No.3163 of 2017 dated 31.01.2023 is confirmed. There shall be no order as to costs.

(J.N.B., J.) (R.S.V., J.)
05.12.2024

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To

The Motor Accident Claims Tribunal (II Court of Small Causes),
Chennai.

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