

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2015

Coram:

The Hon'ble Mr.Justice T.RAJA

C.M.A No.2109 of 2010

Krishnan

... Appellant/Claimant

Versus

1. Sowbhagya Mohan

2. The Oriental Insurance Company Ltd.,
Divisional Office -I,
CSI The JAS Complex,
Sayyaji Rao Road,
Mysore - 1, Karnataka State. ... Respondents/Respondent 1
& 2

Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, against the award dated 05.10.2009 passed in M.C.O.P No.231 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Krishnagiri.

For Appellant .. Mr.P.Mani

For Respondent-2 .. Mr.S.Manohar

JUDGMENT

The Claimant is the appellant. This Appeal is directed against the impugned award 05.10.2009 passed in M.C.O.P.No.231 of 2007, by the Motor Accident Claims Tribunal (Principal Sub Court), Krishnagiri in and by which, the learned Tribunal has awarded a sum of Rs.23,420/- as compensation against the second respondent Oriental Insurance Company Limited, together with interest at the rate of 7.5% per annum.

2. The appellant herein has filed a claim petition on the file of the Motor Accidents Claims Tribunal, (Principal Sub-Court) Krishnagiri, claiming a sum of Rs.3,00,000/- for the grievous injuries sustained by him on his left side chest and simple injury on his right side scalp, in an accident happened on 06.05.2006, due to the rash and negligent driving by the driver of the car bearing No.KA09B1414 belonging to the first

respondent and insured with the second respondent. The learned Tribunal has come to the conclusion that the accident occurred due to the rash and negligent driving of the car by the driver of the first respondent.

3. The learned Tribunal on the basis of the evidence adduced by P.W.2 Dr.Ashok Kumar, and on the basis of the documents Ex.P2- Wound Certificate, Ex.P4-Disability Certificate and Ex.P5-X-ray, found that due to the injuries, the claimant sustained fractures on 5th and 6th ribs and that he is not able to do any hard manual work and that he sustained permanent disability at the rate of 20% and came to the conclusion that the claimant is entitled for a compensation of Rs.20,000/- towards permanent disability, Rs.3,000/- towards pain and sufferings and Rs.420/- towards medical expenses. Ultimately, the Tribunal awarded a sum of Rs.23,420/- as compensation together with interest at the rate of 7.5% per annum as against the claim of Rs.3,00,000/-. Aggrieved by the award passed by the learned Tribunal, the claimant has come up with the present appeal.

4. Assailing the meagre amount awarded by the Tribunal as against the claim of Rs.3,00,000/-, the learned counsel for the appellant submitted that the claimant was able to prove his case before the Tribunal that he has sustained injuries on the left side of his chest and also simple injury on the right side scalp in the accident that took place on 6.5.2006. Dr.Ashok Kumar, who was examined as P.W.2 also supported the claim of the appellant by deposing that P.W.1 sustained fracture on his 5th and 6th ribs and on account of the said injury he is unable to do any hard manual work. Therefore, there is no dispute that the appellant had sustained fracture on his 5th and 6th ribs as a result he is not even able to do his hard manual work. This is also corroborated by Ex.P5-X-ray, therefore, the learned Tribunal ought not to have awarded a meagre amount of Rs.20,000/- towards permanent disability. Similarly Rs.420/- alone has been awarded towards medical expenses taking into account that the appellant was taking treatment only in the Government Hospital. The learned counsel further submitted that the appellant was working as a watchman and earning Rs.3,000/- per month, hence the appellant claimed a sum of Rs.18,000/- towards loss of earning for 6 months, whereas the Tribunal completely overlooked the said claim of the appellant and put the appellant to great hardship. Therefore, the claim of the appellant towards loss of earning has to be considered.

5. Per contra, the learned counsel for the Insurance Company submitted that the appellant has not even produced any document to show that he was taking treatment as inpatient for more than a day. Therefore, the learned Tribunal has come to the

conclusion that he should be paid a compensation of Rs.23,420/- towards the injuries sustained by him.

6. I have carefully considered the rival submissions.

7. Considering the fact that the appellant was taking treatment in the Government Hospital the Tribunal has awarded Rs.420/- towards medical expenses which is neither just nor reasonable. However the Tribunal, considering the evidence let in by Dr.Ashok Kumar, P.W.2 that after examination of the appellant he found that the appellant sustained fracture on his 5th and 6th ribs on account of the injuries sustained by him and that he is unable to do any hard manual work, hence, has come to the conclusion that the appellant has suffered permanent disability at the rate of 20% and awarded Rs.20,000/- towards permanent disability at the rate of Rs.1000/- per 1 percent of disability which is reasonable.

8. However, the appellant has been awarded only a sum of Rs.420/- towards medical expenses and Rs.3,000/- towards pain and suffering, considering the fact that the appellant has been working as watchman, his income is fixed at Rs.2500/- per month and accordingly this Court inclined to award a sum of Rs.15,000/- towards loss of earning. Similarly, a sum of Rs.5,000/- is awarded towards pain and suffering and a sum of Rs.6,000/- is awarded towards medical expenses. In all, the appellant is entitled for a sum of Rs.46,000/- as compensation with interest at the rate of 7.5% per annum from the date of petition till payment. Since the second respondent has already deposited the entire award amount, the enhanced balance award amount together with interest at the rate of 7.5% per annum shall be deposited to the credit of the M.C.O.P. No.231 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Krishnagiri within a period of four weeks from the date of receipt of copy of this order and on such deposit, it is left open to the appellant/claimant to move appropriate application for withdrawal of the entire amount with accrued interest from the Tribunal.

9. The Civil Miscellaneous Appeal is disposed of on the above terms. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Principal Sub-Court),
Krishnagiri.

+1cc to Mr.S.Manohar, Advocate, S.R.No.62097
+1cc to Mr.P.Mani, Advocate, S.R.No.62735

C.M.A.No.2109 of 2010

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