

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2039 of 2016

M.Dhanagopalan

.. Appellant/Petitioner

Versus

1.Jagadeesh

2.Shriram General Insurance Co. Ltd.,
No.66, 2nd Floor, City Centre Complex,
Thirumalai Pillai Road, T.Nagar,
Chennai-17.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 17.08.2015 made in M.C.O.P.No.1964/2013 on the file of the Motor Accidents Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellant : Mr.V.Mohan Choudary

J U D G M E N T

The Civil Miscellaneous Appeal has been filed, challenging the correctness of the impugned award dated 17.08.2015 made in M.C.O.P.No.1964/2013 on the file of the Motor Accidents Claims Tribunal, (IV Small Causes Court), Chennai.

2.It is the case of the claimant that on 13.10.2012 at about 18.30 hours, when he was riding the motor cycle bearing Registration No.TN-20-AY-4146 in Poonamallee High Road, an Echier Van bearing Registration No.TN-02-H-7922, came rashly and negligently in the said road and knocked down the claimant and thereby caused grievous injuries to him.

3.Learned counsel appearing for the appellant/claimant would submit that the appellant/claimant, after receipt of the award dated 17.08.2015 fixing a sum of Rs.4,62,700/- as against the claim of Rs.6,00,000/-, has approached this Court by filing this appeal, seeking enhancement to the extent of Rs.1,37,300/- on the ground that the learned Tribunal, after accepting 40% disability, has fixed only 35% disability and awarded a sum of Rs.1,05,000/- towards disability, as per disability certificate marked as Ex.P11. Adding further, he would submit that although the appellant/claimant was aged about 67 years at the time of

accident, being an Electrician, was getting Rs.400/- as his daily income, the same has not been considered by the learned Tribunal in fixing loss of earnings. Learned Tribunal, accepting the discharge summary issued by Sri Ramachandra Hospital, Porur, Chennai, MIOT Hospital, Chennai and all connected medical records, has fixed only a sum of Rs.39,000/- towards loss of income. Moreover, with regard to other heads namely pain and suffering, extra nourishment, transport to hospital, learned Tribunal has not fixed the reasonable amount and therefore, he prays for enhancement.

4.This Court is not able to find any infirmity in the impugned award. The reason is that the claimant sustained injuries on the date of accident i.e. on 13.10.2012 and he was admitted as inpatient in Sri Ramachandra Medical Hospital, Porur, Chennai and he was taking treatment for two days namely 13.10.2012 and 14.10.2012 and thereafter he was shifted to MIOT Hospital, Chennai and there he was treated as inpatient from 14.10.2012 to 29.10.2012. Learned Tribunal, considering the fact that in both hospitals namely Ramachandra Hospital and MIOT hospital, the claimant had undergone treatment, nature of injuries suffered by him, which are complete injury in the liver laceration and lacerated wound in the right groin and large abrasion left elbow, considering the disability certificate, which shows that he has also undergone Hernia surgery and the same cannot be linked with the accident and also considering Ex.P4/hospital bills for a sum of Rs.23,396/-, Ex.P5/Medical Bills for a sum of Rs.11,820/-, Ex.P17/MIOT Hospital Bills for a sum of Rs.40,452/- and the total medical expenses incurred by the claimant at Rs.75,668/-, has awarded a sum of Rs.75,700/- towards medical expenses. Therefore, this Court finds no infirmity in fixing the medical expenses. However, with regard to his disability suffered on account of the accident, the learned Tribunal, after perusing the disability certificate certifying that he has suffered 40% disability on the basis of Ex.P11/Disability certificate issued by P.W.2, which shows that he had suffered fracture and also sustained certain injuries, has accepted 35% disability, for which applying the ratio laid down by this Court in the case of National Insurance Company v. G.Ramesh reported in 2013 (2) TNMAC 583, has rightly determined a sum of Rs.3,000/- for each percentage of disability and accordingly a sum of Rs.1,05,000/- has been awarded towards injuries. It is necessary to extract the said judgment as under:

"6.Considering the fact that the claimant is a youngster, aged 23 years, having suffered fracture of tibia and fibula bones and taking note of the fact that chances of recovery are bright at such age, this Court is inclined to interfere with the award of the Tribunal. However, this Court is of the view that acceptance of a sum of Rs.2,000/- per percentage of

disability is incorrect, given the present day cost of living. It would be more appropriate to accept Rs.3,000/- per percentage of disability."

5. With regard to the head 'loss of income', the learned Tribunal, considering the fact that the claimant/appellant has miserably failed to prove the oral and documentary evidence with regard to his monthly earning, has fixed Rs.6,500/- as notional monthly income. On this score, a sum of Rs.39,000/- was fixed towards loss of income for six months. Therefore, the compensation of Rs.4,62,700/- awarded by the Tribunal, clearly shows that it has not committed any mistake. Hence, the appeal seeking enhancement, is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

6. Learned counsel appearing for the appellant/claimant submitted that the Insurance Company has deposited the entire award amount and the same has been withdrawn by the appellant/claimant.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(IV Small Causes Court), Chennai.

2. The Section Officer,
V.R. Section,
High Court, Madras.

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