

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.26 of 2014

S.Narayanasamy .. Appellant

-vs-

1. A.Suthagar

2. Oriental Insurance Co.Ltd.,
No.8, Esplanade
Chennai-108

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 25.07.2013 made in M.C.O.P.No.1730 of 2011 on the file of the Motor Accident Claims Tribunal, (VI Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.V.Mohan Choudary

For Respondents :: Mr.S.Manohar for R2
No appearance for R1

JUDGMENT

Mr.S.Narayanasamy, the injured claimant, having obtained an award from the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Chennai in M.C.O.P.No.1730 of 2011 dated 25.7.2013 awarding a sum of Rs.2,32,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, as against the claim of Rs.3,50,000/-, has filed the present appeal for enhancement of Rs.1,00,000/- in the award amount, on the following grounds.

2. Learned counsel for the appellant has contended that when the injured claimant had sustained open grade fracture of R distal radius (comminuted intra-articular) with ulnar styloid process without DNVD in the accident and was taking treatment as an in-patient for nine days and also earning a sum of Rs.350/- per day as a chief mason prior to the accident, as evidenced from the discharge summary issued by the Soundara Pandian Bone and Joint Hospital, which is marked as Ex.P5,, the Tribunal has fixed only a sum of Rs.4,500/- as the notional monthly income, ignoring the fact that he would not be in a position to carry any heavy object due to the fracture to both the bones in his right hand. In fact Dr.K.J.Mathiazhagan, who was examined as P.W.2, has also testified before the Tribunal that the fracture got united only after surgery and even after surgery, the injured was not able to move his right hand beyond 15 degrees. Besides, the disability certificate, Ex.P10 issued by the doctor, P.W.2 has clearly mentioned that the injured had sustained 35% disability. While so, the Tribunal, instead of fixing Rs.3,000/- per percentage for 35% of disability, by reducing the percentage of disability from 35% to 30% unreasonably, has adopted another unreasonable approach in fixing only Rs.1,500/- per percentage of disability, ignoring the fact that the injured mason after the accident is not able to perform his work as he was doing earlier. Secondly, it was contended that when the injured was aged about 57 years, the possibility of of his fracture getting united is out of question. This aspect also has been completely overlooked by the Tribunal. Had it been properly

considered, some more reasonable compensation would have been awarded under the head of loss of earning power. Moreover, towards the loss of amenities also, the Tribunal has completely lost its sight to award any compensation. Even towards future medical expenses, no amount has been awarded. Therefore, the appellant has filed the appeal seeking enhancement of a reasonable sum of Rs.1,00,000/- over and above the compensation amount awarded by the Tribunal.

3. Refuting the above contentions, the learned counsel for the respondent-Insurance company has submitted that when the injured claimant has filed the claim petition claiming a sum of Rs.3,50,000/- as the total compensation for the multiple injuries sustained by him in the accident caused by his friend who was riding the motorcycle in a rash and negligent manner, the Tribunal, considering the fact that the injured had sustained fracture in both the bones in his right hand and also took treatment as an in-patient for nine days in the hospital, has rightly fixed the disability at 30% accepting the disability certificate issued by P.W.2-Doctor certifying 35% disability. Hence no infirmity can be found. Adding further, he submitted that when the Tribunal, after analysing the nature of injuries sustained by the injured, has fixed Rs.1,500/- per percentage of disability, the appeal for enhancement ought not to have been filed, as there is no merit in such claim.

4. But this Court hardly finds any substance in the submissions made by the

learned counsel for the second respondent. Admittedly, it is not in dispute that the appellant/injured was a pillion-rider of the motorcycle driven by his friend and sustained grievous multiple injuries in the accident, which could be evidenced from the discharge summary, Ex.P5 issued by Soundara Pandian Bone and Joint Hospital, where the injured was taking treatment as an in-patient from 11.11.2010 to 18.11.2010 for a period of nine days. When the discharge summary, Ex.P5 has shown that the injured sustained open grade fracture of R distal radius (comminuted intra-articular) with ulnar styloid process without DNVD and the same was also corroborated by the doctor, P.W.2 through the disability certificate, Ex.P10 certifying the disability at 35%, the Tribunal ought not to have reduced the percentage of disability from 35% to 30%, completely overlooking the fact that the injured would not be able to continue his work as a chief mason and would not be able to lift any heavy object after the accident. Even the doctor's evidence clearly shows that in view of the fracture of both the bones in his right hand, the injured was not able to move his right hand beyond 15 degrees. Therefore, this Court, accepting the disability certificate, Ex.P10, is inclined to fix the disability at 35% instead of 30% as ordered by the Tribunal. While doing so, this Court, keeping in mind that the injured being a chief mason would not be in a position to continue his work, is inclined to fix a sum of Rs.3,000/- per percentage of disability, instead of Rs.1,500/- as ordered by the Tribunal and accordingly works out the compensation towards disability at Rs.1,05,000/- instead of Rs.45,000/- awarded by the Tribunal. With regard to the award of compensation towards loss of

amenities, as mentioned above, when the claimant was working as a chief mason at the time of accident, the Tribunal has not awarded any amount under this head. Therefore, this Court is inclined to award a sum of Rs.40,000/- under the head of loss of amenities as well.

5. Accordingly, the civil miscellaneous appeal is allowed accepting the claim of the appellant/injured for enhancement of a sum of Rs.1,00,000/- over and above the total amount of compensation as ordered by the Tribunal along with 7.5% interest per annum from the date of petition till the date of realisation. The second respondent Insurance company, being the insurer of the vehicle, shall deposit the entire amount of compensation together with interest to the credit of the M.C.O.P.No.1730 of 2011 on the file of the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Chennai within a period of four weeks from the date of receipt of a copy of this order and the appellant/claimant is entitled to withdraw the same along with accrued interest by moving appropriate application before the Tribunal. Needless to mention that the second respondent is also entitled to recover the amount of compensation from the first respondent/owner of the vehicle as ordered by the Tribunal. No costs.

Index : yes

02.11.2016

ss

To

1. The VI Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

T.RAJA, J.

SS

C.M.A.No.26 of 2014

02.11.2016