

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.293 of 2014

P.Venugopal

... Appellant/Petitioner

Vs

1.R.Ramesh

2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Patullos Road,
Chennai - 600 002.

... Respondents/Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 12.02.2013, made in MCOP.No.4652 of 2011, on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For appellant : Mr.A.Shanmugaraj

For R2 : Mr.S.Manohar

For R1 : Exparte before the Tribunal

JUDGMENT

Aggrieved by the award dated 12.02.2013, made in MCOP.No.4652 of 2011, on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, in awarding a sum of Rs.1,65,000/- for the injuries sustained by him, the appellant/claimant has preferred the present appeal seeking for enhancement of the compensation.

2. On 02.06.2009 at about 11 a.m., while the claimant was travelling as passenger in a bus bearing Registration No.TN-22-N-1019 along the Walajabadh to Tambaram Road, a lorry bearing Registration No.TN-21-M-4334 belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, dashed against the bus, as a result, the claimant, who was inside the bus, sustained multiple injuries in all over his body. Immediately after the accident, he was taken to Government Head Quarters Hospital,

Kanchipuram, where he took treatment as inpatient between 02.06.2009 and 06.06.2009. Subsequently, the claimant has filed the claim petition claiming a sum of Rs.2,00,000/- as compensation.

3. The Tribunal, after considering the oral and documentary evidence, by holding that the driver of the first respondent is responsible for the accident, awarded a sum of Rs.1,65,000/- as compensation with interest at 7.5% p.a. from the date of claim petition. Aggrieved by that award, the claimant has filed the present appeal seeking for enhancement of the compensation.

4. Learned counsel appearing for the appellant / claimant submitted that while awarding compensation towards disability, the Tribunal ought to have fixed Rs.3,000/- per percentage of disability, instated of Rs.2,000/-, in the light of the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. It is his further contention that since the claimant was admitted in Government Hospital, Kanchipuram for about 5 days and thereafter, he has been continuously taking treatment even now to rectify the dislocation of right elbow and multiple injuries, the Tribunal ought to have awarded atleast a sum of Rs.50000/- towards pain and suffering, instead of Rs.35000/-. On these short grounds, he prayed for enhancement of the compensation awarded by the Tribunal.

5. Per contra, learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the award passed by the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. At the time of accident, the claimant was 40 years old and he was working as a Driver in Fastrack Call-taxi. Dr.N.Saichandra, who was examined as P.W.2 before the Tribunal, deposed that the claimant has suffered dislocation of his right elbow, due to which, he cannot do his work as done before. The Doctor has also issued a disability certificate marked as Ex.P3 assessing the disability at 50%. On examining the disability certificate, the Tribunal, by fixing Rs.2000/- per percentage of disability, has awarded a sum of Rs.90,000/- (45 x 2000) towards disability, which needs modification, in the light of the judgment of the this Court in G.Ramesh's case (cited supra), wherein this Court, by taking note of the the present state of

economy and the rising prices, has fixed fixed Rs.3000/- towards per percentage of disability. Accordingly, this Court hereby awards a sum of Rs.1,35,000/- (45x3000) towards disability.

8. It is also seen that immediately after the accident, the claimant was admitted in the Government Hospital, Kanchipuram, between 02.06.2009 and 06.06.2009 as inpatient. As per the deposition of P.W.2-Doctor, it is clear that the claimant had suffered dislocation of his right elbow, apart from the fracture in all over his body. From Ex.P5-Putur O.P. Chits, it is seen that after discharge from the hospital, he has been continuously taking further treatment to rectify the dislocation of his right elbow as outpatient. Therefore, in my view, the Tribunal ought to have awarded a sum of Rs.50,000/- towards pain and suffering, instead of Rs.35,000/-. Accordingly, this Court hereby awards a sum of Rs.50,000/- towards pain and suffering. Except the modifications on the above said two heads, all other compensations awarded by the Tribunal under various heads are hereby confirmed.

9. In fine, the second respondent Insurance Company is directed to deposit the entire award amount of Rs.2,25,500/- along with interest as ordered by the Court below, less of the amount already deposited if any, to the credit of MCOP.No.4652 of 2011, on the file of the VI Judge, Small Causes Court, Motor Accidents Claims Tribunal, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/appellant herein is permitted to withdraw the entire amount lying in the said credit, by moving appropriate application. Accordingly, the Civil Miscellaneous Application is allowed. The Claimant is directed to pay the necessary additional court fee for the enhanced award amount. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

VI Judge, Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate Sr.64288
+1cc to Mr.S.Manohar, Advocate Sr.64273

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