



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. (MD) .No.1150 of 2015

M.Kadambavanam

... Appellant/claimant

Vs.

1.P.Suresh

2.The Divisional Manager,
Oriental Insurance Company,
No.108, T.P.K. Road,
Madurai - 1.

...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.320 of 2003 dated 08.10.2007 on the file of the Motor Accident Claims Tribunal (IV Additional Sub Court), Madurai.

For Appellant : Mr.S.Ramesh @ Ramiah

For R2 : Mr.K.Bhaskaran

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed to set aside the judgment and decree passed in M.C.O.P.No.320 of 2003 dated 08.10.2007 on the file of the Motor Accident Claims Tribunal (IV Additional Sub Court), Madurai.

2.It is the case of injury caused due to the accident that took place on 10.01.2003 about 10.00 p.m in Madurai New Jail Road near Central Prison. The appellant/claimant sustained grievous injury and fracture in his right leg and injury over the right hand elbow and other injuries all over the body. The claimant/victim filed a claim petition in M.C.O.P.No.320 of 2003 before the Motor Accident Claims Tribunal/IV Additional Sub Court, Madurai and the Tribunal, considering the facts and circumstances of the case, awarded Rs.68,168/- as total compensation. The claimant/appellant preferred the present appeal, questioning the quantum awarded for disability on the ground that the Tribunal



reduced the percentage of disability from 45% to 25% and further erred fixed Rs.1,000/- for 1% instead of the established principles of Rs.2,000/- for 1% of disability.

3.The further contention of the learned counsel for the appellant that the appellant in his cross examination deposed that after his treatment in a recognised hospital, the very same Doctor treated him in his private hospital and he was discharged. But, the Tribunal failed to take into consideration the second treatment taken by the appellant and awarded lesser quantum of compensation to the appellant.

4.The treatment given by the Doctor in his private capacity cannot be relied upon and genuineness of the medical documents are always to be decided and the same shall be proved beyond reasonable doubt. The evidence recorded by the Tribunal clearly shows that that the second treatment taken by the appellant/claimant in his private clinic cannot be considered. Therefore, this Court is inclined to confirm the findings arrived at by the Tribunal in respect of the genuineness of the second treatment taken by the appellant/claimant and the same is rejected for fixing compensation for disability.

5.This Court considering the above facts and circumstances, is inclined to fix a sum of Rs.2,000/- for each percentage of disability instead of Rs.1,000/-. Accordingly, the compensation fixed for disability is enhanced from 25% to 50% and the award is modified from Rs.68,168/- to Rs.93,168/- and the same is rounded off to Rs.93,200/- and in all other respects, the award of the Tribunal passed in M.C.O.P.No.320 of 2003 is confirmed.

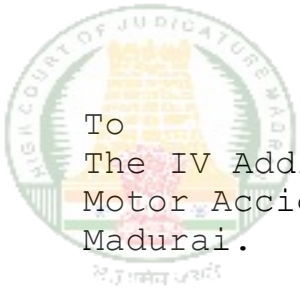
6.The learned counsel for the second respondent represented that the entire award with interest had already been deposited. Hence, the second respondent is directed to deposit the enhanced compensation of Rs.25,000/- with 7.5% interest from the date of petition to till the date of deposit to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same, in addition to the award amount granted by the Tribunal with interest, less the amount already withdrawn, if any, through RTGS, by filing necessary application before the Tribunal concerned.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(AS)

/True copy/



To
The IV Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

Copy To: The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.Ramesh @ Ramiah, Advocate in SR.No. 69371

+1 cc to M/s.K.Bhaskaran, Advocate in SR.No. 69581

cla

CSL/SV/SAR-I/01.02.2017 : 3P/5C

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