IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.01.2017
CORAM
THE HONOURABLE Dr. JUSTICE. S.VIMALA
C.M.A.No.1933 of 2016

Elumalai ... Appellant/Petitioner

versus

1. Ganesh Pillai
2. The Oriental Insurance Company Ltd.,
No.115, Prakasam Salai, Broadway,
Chennai - 1.
(R1 remained ex parte
before the Tribunal) ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 13.08.2014 made in M.C.O.P.No.2658 of 2010 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.J.Chandran
For R1 : No Appearance

JUDGMENT

The claimant, Elumalai, aged about 23 years, a Mason, earning a sum of Rs.10,000/- p.m. met with an accident on 21.03.2010 and sustained injuries. Hence, he filed a claim petition before the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, in M.C.O.P.No.2658 of 2010, claiming compensation of Rs.6,70,000/-.

2. The Tribunal, on considering the oral and documentary evidence, has passed an award for a consolidated sum of Rs.35,000/- towards transportation and extra nourishment and Rs.10,000/- towards medical expenses, in all totalling to Rs.45,000/- as compensation. Challenging the quantum of compensation as inadequate, the claimant has filed this appeal.

3. The learned counsel appearing for the appellant submitted that though the Doctor has assessed the disability at 30%, the Tribunal has not believed the same and has not awarded any compensation towards disability. Though the medical bills (Ex.P7) amounting to a sum of Rs.57,350/-, but, the Tribunal was awarded only a sum of Rs.10,000/- towards medical expenses, which is unsustainable. Furthermore, the Tribunal has not awarded any compensation towards transportation, attendant

charges, extra nourishment and pain and sufferings. Therefore, the award amount needs to be enhanced.

4. The learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal has carefully considered the oral and documentary evidence and correctly held that there are no records to show that the claimant sustained injuries in the said accident. Therefore, the trial court doubted the version of the claimant about the veracity of the occurrence. It is further submitted when the accident itself is in doubt, the disability assessed by the Doctor is not acceptable. However, the Tribunal, considering the injury sustained by the claimant in the face and mouth, awarded a sum of Rs.35,000/- towards transportation and extra nourishment and Rs.10,000/- towards medical bills. Hence, the award is reasonable and it need not be interfered with.

5. A perusal of the award passed by the Tribunal reveals that the claimant has examined himself as P.W.2, wherein, he has deposed that he sustained injuries over the face and also loss of teeth. The doctor, who treated the claimant, was examined as P.W.4, wherein, he has deposed that the injuries sustained by the claimant have resulted in facial disfigurement and has assessed the disability at 30% and has issued disability certificate (Ex.P10).

6. The charge sheet reveals that the claimant has sustained only simple injury. The claimant has also admitted in his examination that he has not sustained any fracture due to the accident. As there was no records to show the injury sustained by the claimant in the accident and there was no treatment records to prove the same, the Tribunal has correctly come to the conclusion that the disability suffered by the injured at 30% cannot be accepted and, therefore, no compensation has been awarded towards disability and, therefore, the said finding requires no interference.

7. However, considering the fact that the injured is stated to have produced medical bills for Rs.57,350/- and also considering the evidence of P.W.4, which shows that the claimant had taken treatment for the injuries as spoken to by the claimant as well as the Doctor, and the insurance company not having disputed the accident by any oral or documentary evidence, the disregard of the medical bills by the Tribunal is not justifiable. The claimant has produced medical bills to the tune of Rs.57,350/-. The said bills have not been held to be fabricated or bogus bills. In such a scenario, there being no dispute with regard to the accident, the claimant is entitled to compensation in a sum of Rs.57,350/- towards Medical expenses. Considering the nature of injury sustained by the claimant in the face and mouth, the Tribunal has awarded a lump sum of

Rs.35,000/- towards transportation and extra nourishment, which is very reasonable and it cannot be held as very low.

8. For the reasons aforesaid, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.45,000/- to Rs.92,350/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. No costs.

9. The Insurance Company is directed to deposit the compensation amount enhanced by this Court above, less the amount if any already deposited, along with interest at the rate of 7.5% p.a. from the date of petition 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 Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The claimant shall pay the court fee for the enhanced compensation before receiving a copy of this judgment.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ogy/GLN

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

2.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.J.Chandran Advocate sr 1894
+1 cc to Mr.K.Varadhakamaraj Advocate sr 1478

C.M.A.No.1933 of 2016

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