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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.115 of 2008

K.Shyamsundar

...Appellant/Petitioner

Vs

1.K.R.Mohan
(set exparte before
lower court)

2.The New India Assurance Company
Limited, No.46, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 12th day of September, 2005 made in M.C.O.P.No.3161 of 2001 on the file of Motor Accident Claims Tribunal (Court of Additional District Judge - Fast Track Court No.5) Madras.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : R1 - Exparte

: Mr.J.Chandran - (for R2)

JUDGMENT

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 12.09.2005 passed by the Motor Accident Claims Tribunal (Court of Additional District Judge - Fast Track Court No.5) Chennai, in M.C.O.P.No.3161 of 2001.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The Appellant sustained injuries on 20.05.2001, as a result of an accident caused by a car bearing registration No.TN-10-C-2212 owned by the first respondent and insured with the second respondent.



(ii) The Appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.3161 of 2001, seeking a compensation of Rs.5,00,000/-.

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(iii) The Motor Accident Claims Tribunal by its Award dated 12.09.2005 in M.C.O.P.No.3161 of 2001, directed the second respondent to pay the Appellant a sum of Rs.95,000/- together with interest at the rate of 9% per annum from the date of claim, till the date of realization.

(iv) Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned Award, the claimant has filed the instant appeal seeking enhancement of compensation.

3. Heard, Mr.K.Varadha Kamaraj, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the second respondent. The first respondent has remained ex-parte before the Tribunal as well as this Court.

4. According to the learned Counsel for the Appellant, under the impugned Award, the Tribunal has not awarded any compensation to the Appellant towards the disability suffered by him as a result of the accident caused by the insured vehicle. According to him, even though disability certificate was produced before the Tribunal, which is marked as Ex.P.8 and PW3-Doctor was also examined as witness, the Tribunal has erroneously not granted any compensation for the disability.

5. According to him, the Appellant sustained a fracture on his left leg and also sustained multiple injuries all over his body and he was employed as a Software Engineer at Dishnet DSL Limited, earning monthly income of Rs.25,000/-. According to him, due to the injuries, the Appellant had to resign from his job, but under the impugned Award, the Tribunal has not awarded any compensation towards loss of earnings to the Appellant.

6. Per contra, the learned Counsel for the second respondent Insurance Company drew the attention of this Court to the findings of the Tribunal and submitted that the Appellant has not suffered any loss of earnings. He would further submit that even according to the Appellant as per his evidence, he has stated that at the time of the accident, he was earning a monthly income of Rs.25,000/- but thereafter, at the time of trial, he has stated that he was earning a monthly income of Rs.38,000/-.



7.The learned Counsel for the second respondent would further submit that the sum of Rs.50,000/- awarded towards medical expenses is also high. He drew the attention of this Court to the findings of the tribunal on this issue and submitted that the Tribunal has observed in its finding that even though the Appellant had produced bills amounting to Rs.84,999.50/-, some of the bills, in particular, the receipt dated 31.08.2001 has no evidentiary value as it does not have any signature and no proper receipt was also issued in this regard. The Tribunal has also observed that some of the bills produced before it pertains to Psychiatric Department and the same is no way connected with the injuries sustained by the Appellant as a result of the accident caused by the insured vehicle. The Tribunal has also further observed that some of the bills are repetitions. According to the learned Counsel, from the said findings, it is clear that the Tribunal has adequately compensated the Appellant.

8.This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels observes the following:

(a)At the outset, this Court would like to point out that despite directions given by this Court on 19.09.2018 for the personal appearance of the Appellant before this Court the Appellant is not present before this Court today. Directions were given for personal appearance only to assess the just compensation payable to the Appellant. The learned Counsel for the Appellant submitted that despite his best efforts, he is unable to contact his client and inform him about the directions given by this Court for his personal appearance.

(b)The Tribunal under the impugned Award has passed a reasoned and well considered Award. The Tribunal has rightly rejected the loss of future earnings to the Appellant based on the fact that at the time of the accident, the Appellant has claimed Rs.25,000/- per month as his monthly income, but has admitted in his deposition that he was earning monthly income of Rs.38,000/- thereafter. Therefore, the Tribunal has rightly rejected the claim of the Appellant towards loss of future income.

(d)The Tribunal has also observed in the impugned Award that the medical bills Ex.P2 submitted by the Appellant has no evidentiary value as it does not have any signature and no proper receipt was issued in this regard. The Appellant has sustained only fracture in the left leg. The accident happened on 20.05.2001, but the Appellant has produced medical bills amounting to Rs.84,999.50/-. The Tribunal has observed in the impugned Award that some of the bills produced by the Appellant



pertains to Psychiatric Department which is no way connected with the injuries sustained by the Appellant. Admittedly the appellant has sustained fracture only in the left leg and therefore the bills pertaining to the Psychiatric Department are no way connected with the injuries sustained by the appellant. Therefore, the Tribunal under the impugned Award has assessed the medical expenses payable to the Appellant on notional basis at Rs.50,000/-.

(e) The Tribunal under the impugned Award has awarded Rs.15,000/- towards pain and suffering, Rs.5,000/- towards loss of amenities, Rs.20,000/- towards future medical expenses and another sum of Rs.5,000/-. The Tribunal has awarded a sum of Rs.20,000/- towards future medical expenses.

(f) As seen from the Award, the Appellant has issued the disability certificate which is marked as Ex.P8 and the disability certificate was issued only on 03.08.2005, whereas the accident had happened on 20.05.2001. The Doctor who assessed the disability of the appellant was examined as PW3 and admittedly he did not give any treatment to the Appellant. The Tribunal has also observed under the impugned Award that the Appellant did not produce X-ray taken by him immediately after the accident. Only under these circumstances, the Tribunal has rejected compensation towards disability.

9. In the considered view of this Court, the Tribunal has rightly rejected the claim of disability compensation to the Appellant. In the light of the above observations, this Court is of the considered view that the Appellant has not made out any case for enhancement of compensation.

10. In the result, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs. It is represented that the entire compensation deposited into the credit of MCOP has already been deposited and the same has already been withdrawn by the appellant.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar



To

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1.The Additional District Judge,
The Motor Accident Claims Tribunal
(Court of Additional District Judge -
Fast Track Court No.5)
Chennai.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.J.Chandran, Advocate Sr.72730

+1cc to Mr.B.S.Padmanabhan, Advocate Sr.71970

C.M.A.No.115 of 2008

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srg 13/12/2018