

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018

Delivered on : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.309 of 2015

V.Sundar

... Appellant/Petitioner

Vs.

1. N.Natarajan

2. The New India Assurance Co. Ltd.,
No.28/29, Woods Road,
City Branch, B.R.Complex, Chennai - 02.
Presently at The New India Assurance Co. Ltd.,
No.45, Moore Street, Vth Floor,
Chennai. ... Respondents/Respondents
(R1 set Exparte in Lower Court)

Prayer:-

Civil Miscellaneous Appeal filed against the Judgement and Decree dated 29.10.2014 made in MCOP.No.3479 of 2012 on the file of the Motor Accident Claims Tribunal, IInd Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents : Mr.J.Chandran (for R2)

JUDGMENT

This Civil Miscellaneous Appeal is filed against judgement and decree dated 29.10.2014 made in MCOP.No.3479 of 2012 on the file of the learned Motor Accident Claims Tribunal, IInd Judge, Court of Small Causes, Chennai.

2.The brief facts of the case are that on 15.05.2012 at about 16:00 hours when the appellant was carefully walking along the manali salai in the direction from east to west during that time a van bearing TN 22 A 6309 was travelling in the same direction as the appellant dashed against him from behind. Due

to the accident, appellants right leg and foot was crushed and sustained injuries all over his body. the accident was caused due to the rash and negligent driving of the van driver. The vehicle is insured with 2nd respondent and the 1st respondent is the owner of the vehicle hence both are liable to pay compensation to the appellant. The appellant filed petition claiming a compensation of Rs.6,00,000/- for the injuries sustained in the accident.

3.The 1st respondent / owner of the vehicle was set ex-parte in the Motor Accident Claim Tribunal (herein after called the Tribunal). The 2nd Respondent filed a counter denying all the allegation made in the claim petition. In the said counter the appellant was put to strict proof of each and every one of the same and sought for dismissal of this appeal.

4.The appellant was examined himself as PW1 and the doctor named N.Sai Chandran was examined as PW2. On the side of the appellant produced documents were marked from exhibit P1 to P9 to prove the claim. On the side the respondents lack both oral and documentary evidences.

5.The Tribunal, on perusal of the materials adduced by the parties, the Tribunal is of the opinion that the 1st Respondent is responsible for the accident and held that the owner and the insurer of the vehicle both are liable to pay the compensation to the appellant. The Tribunal had fixed the award for a sum of Rs.35,000/- compensation to the appellant. Aggrieved by this order thus the appellant have prepared this appeal for seeking an enhancement against the awarded amount.

6.I heard Mr.A.A.Venkatesan, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the 2nd respondent and perused the entire materials available on record.

7.The learned counsel for the appellant contended that the Tribunal failed to consider all the documentary evidences and materials filed by the appellant/injured before it. The counsel contended that the Tribunal had abruptly passed an order of a meager compensation award of Rs.35,000/- failing to consider the break ups, though the appellant suffered from a 30% of disability as certified by the orthopedic doctor in P8, this award was passed without any application of mind.

8.The learned counsel for the 2nd Respondent strongly contended that the Tribunal has considered all the materials evidences and documents filed before it and has passed a reasonable compensation and there is no need for this court's

intervention. Hence the counsel for the 2nd Respondents stated that this appeal requires to be dismissed in limine.

9.The only point for consideration in this appeal:

1.) Whether the appellant is entitled for enhancement of compensation?

10.At first instance, considering the submissions of both sides this court of the opinion that the 2nd Respondent company had not disputed the facts of the accident and only questioned the quantum of the order.

11.On a careful perusal of the records, this court finds that the age of the appellant was 32 at the time of the accident having sustained a crushed injury on his Right Leg and Foot, the appellant is a lorry driver by profession and earned Rs. 15000/- per month. This court finds from the exhibit P4 (discharge summary) that injuries sustained by the appellant were in grievous in nature as the appellant was treated as in-patient from 15.05.2012 to 18.05.2012, the appellant went through a K wire fixation surgery. Then the appellant was assessed to be at 30% disability by the Ortho Doctor. The Tribunal finds that disability set by the doctor (PW2) is on the higher side hence it did not consider the disability. This finds that the Tribunal has failed to set an percentage of disability which it feels right for the appellant. Rather the tribunal has passed an meager order of compensation of Rs.35,000/- without giving any cogent and acceptable reasons does not justifies the Tribunal's action. Therefore this court, sets the appellant's disability at 20% as it is necessary to consider the appellants loss of earning capacity during the accident and treatment period.

12.Considering the above discussions and argument of the counsels this court finds that the Tribunal failing to consider the disability is not reasonable. On the basis of the evidences and injuries sustained by the appellant which are grievous in nature this court is in view to take the disability suffered by the appellant at 20% and awards the appellant with a compensation of Rs.3,000/- per percentage of the disability. Hence the award under the disability head the appellant is entitled to Rs.60,000/-. Since the appellant is lorry driver by profession which is evident from exhibit P7 (driving license), as per the judgment passed by the Hon'ble Division Bench of this Court in the case of Reliance General Insurance Co. Ltd., Chennai v. B.Chithra and others reported in 2018 (2) TNMAC 302 (DB) had fixed the notional income of drivers at Rs.9,000/- per month. From the records adduced by the parties the appellant would have been idled for two months, hence under head of loss of income the appellant is entitled to Rs.18,000/-. The

appellant is also entitled to Rs.10,000/- towards pain and sufferings as the injuries were grievous and undergone surgeries in nature. Further the appellant is entitled to Rs.5,000/- for loss of amenities, Rs.5,000/- towards attender charges, Rs.2,500/- for transport to hospital charges, Rs.2,500/- for extra nourishment and Rs.1,000/- for damages of clothes. The appellant has taken treatment in the Stanely Government Hospital and did not produce bills for the medical expenses, therefore this court does not award any amount towards medical expenses.

13.In the alight of above discussion the award of the Tribunal is modified and enhanced on the above terms. The award granted by the Tribunal is enhanced from Rs.35,000/- to Rs.1,04,000/- as the award of compensation of motor vehicle accidents requires to consider the necessary break ups to pass an order, the Tribunal utterly failed to do so.

14.In the result, the Civil Miscellaneous Appeal is allowed and enhanced the award of the Tribunal from Rs.35,000/- to Rs.1,04,000/-. The 2nd respondent/ Insurance Company is directed to deposit the enhanced award amount with interest at the rate of 7.5% p.a. and cost from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. After such deposit, the appellant is permitted to withdraw the award amount with accrued interest from the Court by filing necessary applications.No cost.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The II Judge,
Court of Small Causes, Chennai.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras-104.(2 Copies)

+1cc to Mr.J.Chandran, Advocate, S.R.No.72729

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.72297

C.M.A.No.309 of 2015

AK(CO)

CS/28/01/2019