

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2018

Delivered on : 28.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.397 of 2015

S.Sridhar ... Appellant

Vs.

1.M/s.Shri Gokulam Hospital (P) Ltd.,
No.3/60, Meyyanur Main Road,
Meyyanur, Salem - 636 004.

2.United India Insurance Co. Ltd.,
4th Floor, Silingi Building,
134, Greams Road, Chennai - 6. ... Respondents

Prayer:- Civil Miscellaneous Appeal filed against the Judgement and Decree dated 21.11.2014 made in MCOP.No.1571 of 2012 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge-II, To deal with MCOP Cases) Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents: Mr.M.J.Vijaya Raghavan (for R2)

No Appearance (for R1)

JUDGMENT

This Civil Miscellaneous Appeal filed against the Judgemnet and Decree dated 21.11.2014 made in MCOP.No.1571 of 2012 on the file of the learned Motor Accident Claims Tribunal, (Special Sub Judge-II, To deal with MCOP Cases) Chennai.

2.The brief facts of the case is that on 08.10.2011 at about 23:05 hours the appellant was carefully pulleying the cycle and crossing the Mount Poonammallee High Road in the direction south towards north during which an empty ambulance van coming from east to west direction in a rash and negligent manner dashed against the appellant. Due to the impact the appellant sustained

multiple grievous injuries. The only cause of the accident, Ambulance Driver's rash and negligent driving. The appellant filed the petition for claiming a compensation of Rs.7,50,000/- for the injuries sustained by him due to the accident against the respondents.

3. On the other hand, the 2nd respondent (insurance company) have filed a counter denying all the allegations made in the claim petition and put the injured to strict proof of everyone and the same. Further the counsel for the insurance company stated that they are liable and sought for dismissal of the claim petition.

4. The appellant was examined himself as PW1 and the doctor was examined as PW2. On the side of the appellant produced documents were marked from exhibit P1 to P6 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.2,70,000/- as 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.M.J.Vijayaraghavan, learned counsel for the 2nd respondent and perused the entire materials available on record. No representation on behalf of the 1st respondent.

7. The appellant's counsel contended that the Tribunal have failed to consider the evidences and documents produced before it. Particularly the disability assessed by the doctor was at 80% but the Tribunal abruptly reduced the disability to 30% without any valid reasons, which is not justified. The Tribunal also failed to consider that the appellant was a mason by profession and such disability affects the total avocation of daily earning. Further the amount awarded by the Tribunal was very meager and the same is to be enhanced.

8.The learned counsel for the 2nd Respondent strongly contended that the Tribunal has considered all the materials before it and 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 47 at the time of the accident having sustained a head injury with complications of 'temporalsabarachnoid' heamorrhage with diffuse, axonal injury, also tracheotomy done and multiple injury all over the body. The above discussed injuries were stated and found in the exhibit P3 (discharge summary). The appellant was admitted as an in-patient from 09.10.2011 to 01.11.2011. The Tribunal was also in opinion of the fact that the injuries sustained by the appellant were in grievous in nature. But, however the Tribunal has found that the doctor PW2 (J.R.R.Thiagarajan) who certified the appellant's disability was not an expert in neurology. All of these sustained injuries of appellant are connected to neurology but the PW2 does not have his expertise set in neurology. The extract as follows from the order of the Tribunal:

"PW2 himself has admitted during his cross examination that the injury sustained by the petitioner is connected to neurology and he is not neurologist. When Pw2 has no special knowledge or ability to performs skillfully with regard to neurological injuries he cannot be treated as an expert....."

Therefore, the Tribunal did not consider the disability certificate given by the PW2 and set the disability at 30% at its own will.

12.The learned counsel for the appellant argued that the doctors issuing the disability certificates need not be an expert or specialist or possess an ability to perform skills with regard to neurology. The counsel also referred an assessment of impairment by doctors, wherein doctors only need to possess and well equipped with basic anatomy, physiology and principles of orthopaedics and rehabilitation to issue a disability certificate. Furthermore, the counsel relied on an Apex Court's judgment citing D.Sampath Vs. United India Insurance co ltd and another 2011(2) TNMAC 422 SC wherein holding similar facts but the High Court of Judicature at Madras, 'after reconsidering the claim of the claimant the High Court had reduced the disability of the claimant from 75% to 50% but the Hon'ble Apex Court has held that the High Court mistake in considering 50% disability taken into account while calculating the loss of income. The Hon'ble Apex Court emphasized in the above produced citation that the Court has the discretion to accept either totally or partially or reject the certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons'. The Apex Court finally taken the entire disability into consideration for calculating the loss of earning capacity.

13.Considering the above discussed judgments and argument of the counsel for appellant this Court finds that the Tribunal reduced the disability from 80% to 30% 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 50% rather than 80% as whole. The other heads under the award passed by the Tribunal is reasonable and confirmed. The appellant is therefore is entitled for an enhancement of the awarded amount only under the disability head. Considering the Tribunal order of Rs.3,000/- for every percentage of disability the appellant is entitled to receive a compensation of $50 \times 3000 = \text{Rs.1,50,000/-}$ (Rupees one lakh fifty thousand only).

14.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.2,70,000/- (Rupees Two Lakhs Seventy Thousand only) to Rs.3,30,000/- (Rupees Three Lakhs Thirty Thousand only).

15.In the result, the Civil Miscellaneous Appeal is allowed and enhanced the award of the Tribunal from Rs.2,70,000/- to Rs.3,30,000/-. The 2nd respondent/ Insurance Company 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 costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The Motor Accident Claims Tribunal,
(Special Sub Judge-II, To deal with MCOP Cases)
Chennai.
- 2.The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to M/S.A.A.Venkatesan, Advocate Sr.81061
+1cc to M/S.M.J.Vijayaraghavan, Advocate Sr.81503

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