

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.03.2018
CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
AND
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2528 of 2017

I.Mohan ...Appellant/Petitioner

Vs

1.Shaik Fayaz

2.Bajaj Allianz General Insurance Co. Ltd.,
Old No.276 & 277, New No.497 & 498,
Isana Kattima Buildings, 5th Floor,
Poonamallee High Road,
Opp to Tamil Nadu Pollution Control Board,
Arumbakkam,
Chennai-106. ...Respondents/Respondents
(R-1 was set exparte in the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.12.2016 made in M.C.O.P.No.3786 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Petitioner : Ms.P.T.Saleem Fathima

For Respondents : Mr.J.Michael Viswasam
for R2

R1 : Exparte in Tribunal

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM., J.]

This Civil Miscellaneous Appeal has been directed against the award dated 22.12.2016 passed in M.C.O.P.No.3786 of 2013 by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant herein, as petitioner, has filed M.C.O.P.No.3786 of 2013, praying to pass an award of Rs.24,00,000/-, due to accident happened on 14.02.2011, wherein, the present respondents have been shown as respondents.

3.The material averments made in the petition are that on 14.02.2011, at about 22.15 hours, the petitioner has driven the motorcycle bearing registration number TN01 AJ6940 from Chennai to Tirupathi on Puthur-Nagalapuram bypass road, at that time, the driver of the first respondent has driven the lorry bearing registration number AP04 Y5436 from opposite direction in a rash and negligent manner, dashed against the motorcycle driven by the petitioner and due to that, the petitioner has got multiple injuries. The lorry of the first respondent has been insured with the second respondent. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4.In the counter filed on the side of the second respondent, it is averred to the effect that the entire accident has been happened, due to rash and negligent driving of the petitioner. It is false to allege that the accident has happened only due to rash and negligent driving of the first respondent. The quantum of amount claimed by the petitioner is excessive and there is no merit in the petition and the same deserves to be dismissed.

5.On the basis of the available evidence on record, the Motor Accidents Claims Tribunal has awarded a sum of Rs.6,04,000/- by way of compensation and in order to get enhancement of compensation, the present Civil Miscellaneous Appeal has been preferred, at the instance of the petitioner, as appellant.

6.The learned counsel appearing for the appellant/petitioner has contended to the effect that due to accident, the appellant/petitioner has sustained multiple fractures. The author of disability certificate has been examined as P.W.2 and his specific evidence is that due to multiple fractures sustained by the petitioner, he cannot do any work in future and the same has not at all been considered by the Motor Accidents Claims Tribunal and therefore, the quantum of compensation fixed by the Motor Accidents Claims Tribunal is liable to be enhanced.

7.Learned counsel appearing for the second respondent has contended to the effect that on the basis of available materials on record, the Motor Accidents Claims Tribunal has rightly awarded compensation of Rs.6,04,000/- and further, there is no specific evidence on the side of the petitioner to the effect that he cannot do any work in future and under the said circumstances, the present Civil Miscellaneous Appeal deserves to be dismissed.

8.It is seen from the records that the disability certificate alleged to have been given by P.W.2 has been marked as Ex.P12, wherein, it has been clearly stated to the effect

that the appellant/ petitioner has sustained 70% permanent disability. In fact, this Court has scanned the entire evidence given by P.W.2, wherein, he has not specifically stated to the effect that the appellant/petitioner has completely lost his earning power in future.

9.The Motor Accidents Claims Tribunal has fixed 65% permanent disability. As stated earlier, in Ex.P12, P.W.2 has assessed permanent disability of 70%.

10.Considering the fact that in Ex.P12, 70% permanent disability has been clearly mentioned and in order to encrust the percentage mentioned in Ex.P12, P.W.2 has given clear evidence, this Court is of the view that the appellant/petitioner has sustained 70% permanent disability and in that way, he is entitled to get compensation of Rs.2,10,000/- towards permanent disability and in aggregation, the appellant/petitioner is entitled to get Rs.6,19,000/- and to that extent, this Civil Miscellaneous Appeal is liable to be allowed.

In fine, this Civil Miscellaneous Appeal is allowed in part without cost. The quantum of compensation fixed by the Motor Accidents Claims Tribunal in M.C.O.P.No.3786 of 2013 is modified as follows:

The appellant/petitioner is entitled to get total compensation of Rs.6,19,000/- (Rupees Six Lakhs Nineteen Thousand only) .

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gya

To
The Presiding Officer
Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

Copy to
The Section Officer
VR Section, High Court, Madras

+1 cc to M/s.P.T.Saleem Fathima/M.Swamikkannu
Advocate sr 16127
+1 cc to M/s.J.Michael Visuvasam Advocate sr 16044

C.M.A.No.2528 of 2017

mr (co)
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