

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.2328 of 2004

N.C.Shanmugam

... Appellant

Vs

1.P.Lakshmanan

2.The National Insurance Company,
Rep by its Branch Manager,
Vellore,
Vellore District

... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.10.2003 made in MCOP.No.475 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court), Tirupattur, Vellore District.

For Appellant : Mr.Sunder Mohan

For R2 : Mr.S.Arunkumar

J U D G M E N t h e

This appeal has been preferred by the claimant/Appellant as against the award passed by the claims Tribunal in M.C.O.P.No.475 of 2002 dated 16.10.2003.

2. The brief facts of the case are as follows:-

On 08.02.1996 at about 10.30 a.m when the appellant was riding his TVS 50 vehicle from Thamalerimuthur to Natrampalli, the mini lorry bearing Registration No.TN65-1935 belonging to the first respondent and insured with the second respondent Insurance Company, came from behind in a rash and negligent manner and dashed against the TVS 50 two-wheeler. Due to the said impact, the appellant was thrown out of the vehicle and sustained injuries on his fore head, eyes and other parts of the body. The appellant filed a claim petition claiming a sum of Rs.75,000/- as total compensation before the Tribunal. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.5,000/- with interest at the rate of 6% per annum from the date of petition.

3.Challenging the same, this appeal has been preferred by the appellant Insurance Company.

4.The learned counsel for the appellant would submit that the Tribunal has erred in awarding only a total compensation of Rs.5,000/- as against the claim of Rs.75,000/-. He further submitted that the evidence of PW1 sufficiently establishes the fact about the income earned by him and the Tribunal has not appreciated the documents in a proper prospective. He further submitted that the Tribunal has erred in not appreciating Ex.P3-Medical Report of the C.M.C.Hospital, Vellore, while arriving at the compensation. He further submitted that in any event the award passed by the Tribunal needs significant enhancement.

5.Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal, based on the witnesses and the documents, has awarded Rs.5000/- as total compensation for the simple injuries sustained by the claimant. He further submitted that with regard to the injuries sustained by the claimant, neither the doctor was examined nor any document was marked before the Tribunal and hence, the award passed is justifiable.

6.Since this appeal is filed by the claimant seeking enhancement of compensation awarded by the Tribunal, this Court would like to deal with the quantum alone, eschewing the negligence aspect.

7. A perusal of the award of the Tribunal would establish the fact that the Tribunal has awarded a sum of Rs.5,000/- in total towards the injuries sustained by the claimant. The Tribunal has taken note of Ex.P2 Wound Certificate from which, it is clear that the claimant has sustained the following injuries:

1. Lacerated wound above left eye
2. Lacerated wound below left eye 2cm. X skin deep.
3. Lacerated wound on left shoulder 3 x 3 cm.
4. Nazal bleeding from both nostrils.
5. Lacerated wound on left wrist.
6. Lacerated wound on right palm.
7. Lacerated wound on both knee.
8. Lacerated wound on right foot.

8.The Tribunal has taken note of EX.P3/Medical report wherein, it is seen that there was a fracture on the left occipital bone. Though the Tribunal has observed that to connect the said injury, the claimant has not produced any relevant documents before the Tribunal, this Court is of the view that the same was supported by Ex.P3-Medical Report itself. Further the accident or the manner of accident was not disputed by the respondents herein before the Tribunal. In the said circumstances, the Tribunal ought to have accepted Ex.P3/Medical report. On the basis of Ex.P3, it is apparent

that the claimant has suffered fracture and underwent treatment for the same. It would be appropriate to award a sum of Rs.40,000/- towards the fracture and the treatment undergone, in addition to the amount of Rs.5,000/- awarded by the Tribunal. Accordingly, the appellant / claimant is entitled to the modified compensation of Rs.45,000/-. It is made clear that for the compensation of Rs.5,000/- awarded by the Tribunal, the interest rate of 6% per annum shall be calculated from the date of claim petition. The enhanced amount of Rs.40,000/- will carry interest at the rate of 7.5% per annum and the same shall be calculated from the date of filing of this appeal.

9. In the result, Civil Miscellaneous Appeal is partly allowed. No costs. The 2nd respondent / Insurance company shall deposit the enhanced compensation amount along with interest as awarded by this Court and costs, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-III MDU)

//True copy//

Sub Assistant Registrar

srk/vsn

To

1. The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
(Fast Track Court), Tirupattur, Vellore District.

Copy To : The Section Officer,
VR Section, High court,
Madras -104.

+1cc to Mr.S.Arunkumar, Advocate SR.No.73357

C.M.A.No.2328 of 2004

GP (CO)
GMY (20/08/2020)