

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3667 of 2006

Mohammed Ali

Appellant / Petitioner

Vs

1. R.Dharmalingam

2. M/s.United India Insurance Co Ltd

C/o Motor Third Party Claims Offices

No.38 Anna Salai

Chennai - 600 002.

Respondents / Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.04.2006 made in MCOP No.3125 of 2001 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, V Fast Track Court, Chennai.

For Appellant : Mr.T.G. Balachandran

R1-Exparte

R2-No Apperance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant / claimant against the award passed in MCOP No.3125 of 2001.

2.The case in brief is as follows:-

On 11.06.2001 around 2.00 hours, when the claimant was driving a TATA Sumo vehicle bearing Reg.No.TN 04 Y 1314 from Sembakkam to Enathur, Kancheepuram District, a lorry bearing Reg.No.TN23 B 4759, driven by its driver in a rash and negligent manner in opposite direction, dashed against the TATA Sumo vehicle, due to which, the claimant sustained grievous injuries. Hence, the claimant/ the respondents 1 and 2 filed a Claim petition before the Tribunal. On consideration of the evidence available on record, the Tribunal has awarded a total compensation of Rs.25,000/- as against the claim of Rs.2,50,000/-.

3. Aggrieved against the award passed by the Tribunal, the appellant / Claimant has preferred this Civil Miscellaneous Appeal.

4. Though this appeal was admitted way back in the year 2007, the appellant has not taken proper steps to serve notice on the other side. However, considering the passage of time, this appeal is taken up for consideration on merits.

5. Heard the learned counsel for the appellant/claimant

6. The learned counsel for the appellant submitted that the award passed by the Tribunal is against law, weightage of evidence and probabilities of the case. The Tribunal has granted a meager sum of Rs.5,000/- only towards loss of earning for a period of 3 months. The learned counsel further submitted that the Tribunal has not approached the case of the appellant in proper perspective.

7. At the outset, it is to be noted that the liability fixed by the Tribunal, on the part of the 2nd respondent herein is not disputed. The only contention raised by the appellant herein is that the Tribunal has awarded a disproportionate compensation, without appreciating the evidence and documents properly. On a perusal of the award passed by the Tribunal, it seems that immediately after the accident, the claimant took treatment at Government Hospital, Kancheepuram and later he has taken treatment from private doctor. The Tribunal has taken into account Ex.P.2 OP Chit of Government Hospital, Ex.P.3 Report of Orthopaedic doctor, Ex.P.4 Medical expenses receipt, Ex.P.5 Photos, Ex.P.7 X-ray and awarded a sum of Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards medical expenses and Rs.5,000/- towards extra nourishment and attender's expenses. Since the claimant has taken treatment at Government Hospital and no sufficient oral or documentary evidence has been adduced on the side of the claimant that he took treatment from a private doctor, the Tribunal has awarded a sum of Rs.5,000/- towards medical expenses, in which, this Court do not want to interfere with. Further, the Tribunal considered the nature of injuries sustained by the claimant and period treatment taken by him as well as Ex.P.9 Salary Certificate has awarded a sum of Rs.5,000/- towards loss of income.

8. The findings arrived at by the Tribunal for not considering the Disability Certificate of claimant is that the doctor who issued disability certificate under Ex.P.6 has been examined before the Tribunal and admittedly he has not treated the claimant at the time of accident and further he issued Disability Certificate after 4 ½ years from the date of accident. Moreover, the Tribunal has observed that the doctor did not peruse the earlier medical records of the claimant, before issuing the disability certificate to him and no cogent evidence has been adduced by the claimant to establish that he was in continuous treatment till he approached PW 2 doctor. Hence, this Court has come to the conclusion that the amounts awarded by the Tribunal under the above heads are reasonable and hence the same are confirmed.

9. In such view of the matter, the Civil Miscellaneous Appeal is dismissed. No costs. The 2nd respondent Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount, to the Savings Bank Account of the claimant / appellant herein, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal, V Fast Track Court,
Chennai.
2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

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LN (CO)
GMY (19/08/2020)

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