



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.1830 of 2013

WEB COPY

D.Venkatachalapathy

...Appellant/Claimant
vs.

1.T.Murugan

2.The United India Insurance Co. Ltd.,
No.64, Aremenian Street,
Chennai - 01.

... Respondents/ Respondents

(the 1st Respondent exparte in Lower Court
hence notice may be dispense with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.02.2013 passed in MCOP.No.2208 of 2010 on the file of the Motor Accident Claims Tribunal / V Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arun Kumar for R2

For R1 : Exparte

J U D G M E N T

The appellant is the claimant in MCOP.No.2208 of 2010 on the file of the Motor Accident Claims Tribunal / V Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 07.06.2010.

2. The case of the claimant is that on 07.06.2010, he was a pedestrian along Peravallur SRP Koil Street in front of Thuraiyur Nadar Marriage Hall and at about 12.00 hours, a speeding motorcycle bearing Registration No. TN 05 X 5740 hit him, as a result of which, he sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the United India Insurance Company, the owner and the insurer of the motorcycle are jointly and severally liable to pay compensation.



3. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned V Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.20,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant / claimant contended that though Dr.N.Saichandran (PW2) has assessed the partial permanent disability as 60%, the Tribunal without considering the same, had awarded a meagre amount of Rs.20,000/- towards compensation and therefore, the same has to be enhanced.

5. Per contra, Mr.S.Arun Kumar, learned counsel appearing for the United India Insurance Company contended that since the injuries sustained by the appellant / claimant are simple in nature, the award passed by the Tribunal is just and reasonable and therefore, the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent.

7. A perusal of the orders passed by the Tribunal shows that the Tribunal rejected the Disability Certificate (Ex.P5) issued by Dr.N.Saichandran (PW2) on the following grounds:

(i) The claimant has not filed discharge summary to show the actual injuries sustained by him in the accident.

(ii) The claimant has filed photostat copy of the Accident Register (Ex.P4) which is not clear on the aspect of the injuries sustained by him.

(iii) Merely based on the Disability Certificate (Ex.P5) issued by Dr.N.Saichandran (PW2), no amount can be awarded towards partial permanent disability, in the absence of any other medical records.

8. In the instant case, the police after completing investigation had laid a final report against the rider of the motorcycle under Sections 337 and 338 of IPC, Sections 184 and 134 (a and b) read with 187 of Motor Vehicles Act as evidenced by a copy of the charge sheet (Ex.P3). Therefore, the injuries sustained by the appellant / claimant are grievous in nature. However, the claimant has not filed any medical records to show the actual injuries sustained by him in the accident and a copy of the Accident Register (Ex.P4) is not also clear on this aspect. Dr.N.Saichandran (PW2) had examined the appellant / claimant after three years and even



without verifying the medical records, he had assessed the permanent disability as 60%. In the facts and circumstances, the Tribunal was right in rejecting the partial permanent disability certificate issued by Dr.N.Saichandran (PW2). However, it is seen from the records that the claimant has sustained injuries on account of the accident and therefore, a sum of Rs.20,000/- towards "pain and sufferings", Rs.5,000/- towards "extra nourishment", Rs.2,000/- towards "attender's charges" and Rs.5,000/- towards "transportation" are awarded. Therefore, the quantum of compensation awarded by the Tribunal is enhanced from Rs.20,000/- to 32,000/-, which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.20,000/- to Rs.32,000/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.32,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.2208 of 2010 on the file of the Motor Accident Claims Tribunal / V Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge,

V Small Causes Court, Motor Accidents Claims Tribunal,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj , Advocate SR.No. 96626

+1cc to Mr.S.Arun Kumar , Advocate SR.No. 96818

CMA.No.1830 of 2013