

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.867 OF 2011

R.Mugavai Muniasamy

...Appellant/Petitioner

Vs.

1.S.Sakkarapani

2.National Insurance Co. Ltd.,

No.66, Greams Road, Chennai 600 006 ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, against the judgment and decree dated 20.02.2008 made in M.C.O.P. No.5419 of 2005 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.R.Arundattan

For Respondents : Mrs.N.B.Surekha for R2.
R1 - Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P. No.5419 of 2005 on the file of the II Judge, Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 09.10.2005.

2. According to the appellant / claimant, on 09.10.2005, he was standing on the extreme left hand side of the 100 feet road, Guindy and that at about 10.00 p.m., a speeding Ambassador Car bearing registration No.TN-01-L-4030 hit him, as a result of which, he sustained injuries all over his body. The further contention of the appellant / claimant is that the rash and negligent driving of the driver of the Ambassador car was the cause of the accident and that since the said car was insured with the second respondent, both of them are jointly and severally liable to pay compensation of Rs.3,00,000/- to him.

3. The owner of the car remained absent before the tribunal and therefore, he was set exparte. The second respondent National Insurance Company contested the claim petition.

4. The learned II Judge, Court of Small Causes, Chennai, after analysing the evidence on record awarded a compensation of Rs.47,500/- together with interest at the rate of 7.5% per annum to the appellant / claimant. The award passed by the Tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Compensation for partial and permanent disability	25,000/-
2.	Pain and sufferings	10,000/-
3.	Transport to Hospital	1,000/-
4.	Extra nourishment	1,000/-
5.	Damages to clothing	500/-
6.	Loss of earnings	10,000/-
	Total	47,500/-

Not satisfied with the quantum of compensation awarded by the tribunal, the appellant claimant has filed the present appeal seeking for enhancement of compensation.

5. Mr.R.Arundattan, learned counsel for the appellant would contend that though Dr.J.R.R.Thiagarajan (P.W.2), has assessed the partial permanent disability as 35%, the tribunal had reduced it to 25% without assigning any reasons and awarded a meagre amount of Rs.25,000/-. He further prayed for enhancement of compensation amount. In the instance case, the injured was aged 45 years on the date of accident and sustained fracture of left ankle. According to him, he was a labourer and was earning a sum of Rs.300/- per day. When Dr.J.R.R.Thiagarajan (P.W.2) has assessed the partial permanent disability as 35%, as rightly pointed by the learned counsel for the appellant, the tribunal without assigning any reasons has reduced the percentage of disability as 25%.

6. At this juncture, the learned counsel appearing for the second respondent would contend that no surgery was performed and that the percentage of disability assessed by Dr.J.R.R.Thiagarajan is on the higher side and that he is not a competent person to issue the partial permanent disability certificate since he his not an orthopaedic surgeon.

7. Merely because Dr.J.R.R.Thiagarajan is a general surgeon, his evidence as well as the disability certificate

(Ex.P7) issued by him cannot be thrown out in entirety. The doctor has given cogent reasons for arriving at the partial permanent disability as 35%. In the facts and circumstance, a sum of Rs.35,000/- (35 x 1000) is awarded towards partial permanent disability. It is also relevant to point out that there is no functional disability warranting any multiplier method in the instant case. As far as the other heads are concerned, they are perfectly in order and do not warrant any interference by this Court.

8. In the result.

(i) The appeal is partly allowed. No costs.

(ii) The award passed by the tribunal is enhanced to Rs.57,500/- (Rupees Fifty Seven Thousand Five Hundred only) from Rs.47,500/- which shall carry an interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The Insurance Company is directed to pay the enhanced compensation amount of Rs.57,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the claimant is entitled to withdraw the same, after following due process of law.

(v) Since the appeal is filed with a delay of 461 days, it is made clear that the appellant / claimant is not entitled for any interest for 461 days.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bga

To

II Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai

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

+1cc to Mr.C.Munusamy, Advocate SR.No.1158

+1cc to Mr.N.B.Surekha, Advocate SR.No.1625

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BS (CO)
GMY (06/05/2019)



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