IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2582 of 2019

Ramasamy ... Appellant/Petitioner

Vs.

1. Senthamizh Selvan

2. United India Insurance Company Limited
   No.29C, 1st Floor,
   C.N.A.Road, Khaderpet,
   Vaniyampadi.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.07.2018 and made in M.C.O.P.No.705 of 2010 on the file of the Motor Accident Claims Tribunal, Sub-ordinate Judge Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.705 of 2010, dated 06.07.2018, on the file of the Motor Accidents Claims Tribunal/ Subordinate Judge Court, Sankari.

2. The appellant herein, who is the claimant, has filed M.C.O.P.No.705 of 2016, on the file of the Motor Accidents Claims Tribunal/ Subordinate Judge Court, Sankari claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in a road accident which took place on 01.09.2010 at about 09.00 when the petitioner/appellant was going near Elayampalayam bus stop opposite at extreme left side of Tiruchengode to Namakkal main road, at that time, the vehicle bearing Registration No.TN-23 AT-5421 (Hero Honda Splender Plus), drove the vehicle in a rash and negligent manner and hit against the appellant, due to which the appellant fell down on the ground and sustained injuries i.e., fracture in right leg and all over body. The second respondent/The United India Insurance Company Limited stated in the counter statement that

there is no rash and negligent driving on the part of the first respondent/Driver belonging to the second respondent/Insurance Company.

3. The Tribunal upon considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the vehicle belonging to the second respondent/United India Insurance Company Limited and directed the second respondent/ United India Insurance Company Limited to pay the compensation of a sum of Rs.5,00,000/- to the claimant.

4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

(a)Ex.P1 : Copy of FIR
(b)Ex.P2 : Medical and Transport Bills
(c)Ex.P3 : Discharge Summary
(d)Ex.P4 : Insurance Certificate
(e)Ex.P5 : Discharge Summary
(f)Ex.P6 : Wound Certificate
(g)Ex.P7 : Discharge Summary
(h)Ex.P8 : Copy of X-ray

On the side of the second respondent/The United India Insurance Company Limited, witnesses R.W.1 and R.W.2 were examined and following exhibits were marked:

Ex.R.1. : Final Report
Ex.R.2 : Insurance Certificate

5. Aggrieved by the award, the appellant/claimant has filed the present appeal for enhancement of compensation.

6. Heard both sides and perused the documents available on record.

7. The learned counsel for the appellant submitted that the Tribunal has grossly erred in awarding a meager amount as compensation which not in consonance with the facts and circumstances of the case. The Tribunal has failed to apply its mind while passing order in the above Motor Accidents Claim Petition. Though the Tribunal had given a finding that the accident occurred only due to the rash and negligent act of the two wheeler rider, had awarded only very meagre amount as compensation against the established principles. The Tribunal did not award anything under the heads of loss of amenities. The ultimate award of Rs.5,00,000/- under various heads is very low.

8. The learned counsel appearing for the second respondent/Insurance Company contended that the accident

occurred only due to the rash and negligent driving of the injured person. Further, his grievance is that the appellant sustained only simple injuries and there is no permanent disability.

9. As per materials available on record, it is seen that the P.W.1 / appellant/claimant deposed that he was running a business in the name of Mahalakshmi Finance Company and earning a sum of Rs.10,000/- per month. But no income proof document was filed by the appellant/claimant. Due to the said injuries and disabilities, he would have been disabled from doing his job. Hence, the Tribunal decided to take the monthly income of the injured at Rs.6,000/- per month. P.W.2/Doctor deposed that the appellant/claimant sustained fractures in right leg and severe injuries in all over the body. P.W.2/doctor assessed the disability at 36%. Based on the nature of injuries and the evidence of P.W.2/doctor, the Tribunal has taken the same only at 36%. The Tribunal fixed the age of the appellant/claimant 74 based on Ex.P5/discharge summary and Ex.P6/wound certificate and applied multiplier '5'. Thus, the compensation awarded under the head 'loss of earning capacity' at Rs.1,29,600/- (Rs.6,000/- X 12 X 5 X 36%) and it was rounded into Rs.1,30,000/- is very much proper and reasonable.

10. As far as the quantum of compensation, the Tribunal awarded a sum of Rs.1,62,000/- towards Medical Expenses, Rs.70,000/- towards pain and suffering, Rs.31,000/- towards transportation Expenses, Rs.25,000/- towards Nutrition Food, Rs.12,000/- towards cost of attender, Rs.20,000/- towards future medical expenses and Rs.50,000/- towards simple injury, thus totalling to Rs.5,00,000/-. In view of the injuries sustained by the claimant and as considering the evidence and documents, the compensation amount awarded by the Tribunal under the above heads are very reasonable and hence the same are confirmed. It is seen from the records that this Court has already dismissed the petition filed by the appellant for enhancement of compensation from Rs.5,00,000 to Rs.6,00,000/- by an order dated 08.02.2019.

11. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.5,00,000/- as compensation awarded by the Tribunal to the appellant herein, along with interest and costs is hereby confirmed.

12. The second respondent/United India Insurance Company Limited is directed to deposit the entire compensation of Rs.5,00,000/- (if not 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 M.C.O.P.No.705 of 2010, dated 06.07.2018, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Sankari within a period

of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount as ordered by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To
1. The Sub-ordinate Judge
   The Motor Accident Claims Tribunal
   Sankari

C.M.A.No.2582 of 2019

VGII(CO)
SP(10/11/2020)