IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.317 of 2016

K.Sugumar .. Appellant/ Petitioner

vs.

1.N.Mohanraj

2.The Oriental Insurance Co. Ltd.,
No.115, Prakasam Salai,
Broadway, Chennai - 108. .. Respondents/ Defendants

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 19.11.2015 in M.C.O.P.No.145 of 2013 on the file of Motor Accidents Claims Tribunal (II Additional District Court), Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : Mr.S.Manohar for R2
R1 - No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The claimant is the appellant. Seeking enhancement of compensation, the above appeal has been filed.

2.Before the Tribunal, a sum of Rs.50 lakhs has been sought for by the claimant for the injuries sustained by him in the accident that occurred on 16.08.2012. The Tribunal, after holding that the accident has occurred due to the negligence of the first respondent and therefore the second respondent/insurance company is liable to pay the compensation, awarded the compensation payable at Rs.15,64,700/- under seven different heads.

3.Learned counsel appearing for the appellant would contend on only one aspect. This is with respect to the loss of income suffered pursuant to the accident. It appears that for the partial permanent disability, a sum of Rs.1,60,000/- has been awarded. The evidence of P.W.4/employer of the injured is only to the effect that after the accident, the appellant did not report for duty. Thus, the learned counsel submitted that the aforesaid aspect will have to be taken into consideration and enhanced compensation will have to be paid.

4.Learned counsel appearing for the second respondent/insurance company would submit that the appellant was aged 27 years at the time of accident. There is no other material sufficient enough to hold that he could not do his job and therefore, it has to be presumed that he left the job on his own. Hence no interference is required.

5.Inasmuch as on the seven heads, payments have been made and has become final, we are not inclined to go into the same. Thus the only issue for consideration is as to whether there exists a loss of income and if so, what is the just compensation payable under that head. P.W.4 in clear terms has deposed that right from the date of accident, the appellant has not reported for duty. His evidence also would show that the appellant has suffered grievous injury viz., fracture on the right thigh and left hip. A total sum of Rs.10,48,700/- has been spent towards medical expenses. These factors are not in dispute.

6.Now, we have to take into consideration the evidence of P.W.4, which was in fact taken note of by the Tribunal. The evidence has not been dislodged by the second respondent. We are dealing with the summary proceedings before us. P.W.4 has stated that right from the accident, the appellant could not attend to his work. There is no material to show that the appellant was actually working thereafter. It is the specific case of the appellant that he was unable to work. Though there is no medical evidence specifically on this aspect, in view of the other evidence as discussed above coupled with the fact that the Tribunal has not considered this aspect at all, notwithstanding the awarding of a sum of Rs.1,60,000/- towards partial permanent disability and a sum of Rs.2,30,000/- towards loss of earning during the interregnum, we are inclined to grant a further sum of Rs.4 lakhs. After all, the medical expenses themselves come to Rs.10,48,700/-.

7.In such view of the matter, we are inclined to modify the award amount. We are of the view that the compensation can be fixed by adding Rs.4 lakhs, which would come to Rs.19,64,700/-, rounded off to Rs.19,70,000/-.

8.The second respondent/insurance company is directed to deposit the enhanced compensation amount along with proportionate interest and costs to the credit of M.C.O.P.No.145 of 2013 on the file of Motor Accidents Claims Tribunal (II Additional District Court), Poonamallee within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/appellant is permitted to withdraw the entire compensation amount along with accrued interest and costs.

9.In the result, the Civil Miscellaneous Appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Oriental Insurance Co. Ltd.,
No.115, Prakasam Salai,
Broadway, Chennai - 108.

2.The II Additional District Court
Motor Accidents Claims Tribunal
Poonamallee.

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

+2ccs to Mr.K.Varadha Kamaraj, Advocate SR.No. 11075
+1cc to Mr. S.Manohar, Advocate SR.No. 10646

C.M.A.No.317 of 2016

A.SK(13/06/2019)