

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1344 of 2019

K.Ravi

.. Appellant/ Petitioner

Vs.

1.Dr.N.Selva Raj

2.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002.

.. Respondents/ respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2000 made in M.C.O.P.No.1535 of 1998 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.R.Kalaiarasan

For R2 : Mrs.C.Harini for
M/s.M.B.Gopalan Associates

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 21.03.2000 made in M.C.O.P.No.1535 of 1998 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.By consent of both the learned counsel for the appellant and 2nd respondent, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.1535 of 1998 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. He filed the said claim petition

claiming a sum of Rs.2,25,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.1998. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.81,283/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to note that right arm of the appellant fractured, which affected his avocation as a driver. The appellant examined P.W.2/Doctor and proved that he suffered 60% disability. The Tribunal erred in awarding only a sum of Rs.50,000/- towards both disability and loss of earning power. The appellant was earning a sum of Rs.2,500/- per month and lost his income for eight months due to the injuries sustained by him in the accident. The Tribunal erred in granting only a sum of Rs.10,000/- towards loss of income. The appellant has taken treatment in the hospital as in-patient for four days. The amount awarded by the Tribunal towards pain and suffering is meagre. The Tribunal has not awarded any amount towards attendant charges and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that P.W.2/Doctor, who certified the disability suffered by the appellant, is not an Orthopedic specialist and he did not treat the appellant. The Tribunal considering the nature of injuries and disability suffered by the appellant, has rightly awarded a sum of Rs.50,000/- towards disability as well as loss of earning power. In addition to that, the Tribunal has awarded a sum of Rs.10,000/- towards loss of income. The accident is of the year 1998. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that he had fracture on his right hand and due to the same, he could not do the work as he was doing earlier. The amount awarded by the Tribunal towards disability and loss of earning power is meagre. P.W.2/Doctor, who examined the appellant, has certified the

disability at 30% for the fracture of right hand and 30% for head injury and totally assessed the disability of the appellant at 60%. The Tribunal considering the evidence of P.W.2/Doctor, held that P.W.2 is not an Orthopedic specialist and awarded a sum of Rs.50,000/- towards both disability as well as loss of earning power. Further, the Tribunal has awarded a sum of Rs.10,000/- towards loss of income for four months. Considering the fact that the accident occurred in the year 1998 and the entire materials available on record, the total compensation of Rs.81,283/- awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and the award of the Tribunal does not warrant any interference by this Court.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is hereby confirmed. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

///True Copy//

Sub Assistant Registrar

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To

1.The VI Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,Chennai.

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 18438

+1cc to Mr.N.M.Muthuraman, Advocate SR.No. 19062

C.M.A.No.1344 of 2019

A.SK(19/09/2019)