

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 20.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2572 of 2019

S.Kamal

... Appellant

Vs.

1. ACS.Arunkumar

2. The Oriental Insurance Co.Ltd.,
No.216/115, Prakasam Salai,
Broadway, Chennai - 108.

... Respondents

PRAYER: Civil Miscellaneous Appeal is are filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 05.09.2018 made in M.C.O.P.No.633 of 2014 on the file of the Motor Accident Claims Tribunal, (II Additional District Judge), Poonamallee.

For Appellant : Mr.Varadhakamaraj
For Respondents : Mr.R.Sivakumar for R2
R1 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the claimants aggrieved against the award made by the Tribunal at Rs.40,000/- against the claim of Rs.3,00,000/-.

2. The appellant/claimant sustained injuries due to the accident occurred on 16.06.2014. On 16.06.2014 at about 4 ' Clock in the evening, the appellant was riding a motorcycle bearing Registration No TN 22 CM 6751 along with his friend one Srinivasan as pillion rider. When he was proceeding in the north to south, while they were crossing the Nasarathpet new bridge, at that time, a tempo van which belongs to the first respondent bearing registration No TN 09 BB 3999 came in a rash and negligent manner and hit at the backside of the motorcycle, thereby the appellant/claimant sustained grievous injuries. Immediately, he was taken to Kilpauk Medical Hospital (KMC), Chennai for treatment and thereafter he had taken treatment in

Puthur. Hence he claimed a sum of Rs.3,00,000/- as compensation for the injuries sustained by him under various heads.

3. The 2nd respondent Insurance company denied the mode of accident as stated by the appellant/claimant in the claim application. The other aspect denied by the Insurance corporation is that both the petitioner and the 1st respondent were not possess any valid licence at the time of accident. The Tribunal after analysing the evidence and documents placed before him, has given a finding that the accident occurred due to the negligent driving on the part of the driver of the Tempo van and awarded a sum of Rs.40,000/- as total compensation for injuries, pain and sufferings, transport expenses and extra nourishment. Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

4. The appellant/claimant very much aggrieved by the award and contended that the Tribunal has not considered the disability assessed by the Medical Board at 15% and no sum has been awarded for the said disability. Hence, the appellant/claimant sought for remanding the case to the trial Court for considering the same. Further, the sum awarded by the Tribunal without considering the disability is against the decisions laid down by the High Court and Supreme Court.

5. The learned counsel for the appellant/claimant has also contended that the Tribunal ought to have awarded compensation of Rs.3,00,000/- as claimed by the appellant/claimant by observing the precedents of this Court and the Supreme Court in similar cases .

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

7. On a perusal of the records and the award of the Tribunal, it is seen that the appellant/claimant sustained injuries due to the said accident. The Tribunal has observed the evidence deposed by PW1/injured person and the same has also been recorded as follows:

"விபத்தினால் மனுதாரருக்கு முக்கு, இடது பக்க கண்ணில் காயமும், இடது கால் முட்டிக்கு கீழ் எலும்பு , முறிவும் உடலில் காயம் (Abrasion on the face, injury on the left nose and injury right eye brow and swelling and tenderness on the right and left thigh) ஏற்பட்டது."

8. The appellant/claimant has also deposed before the Tribunal that immediately after the accident, he was taken to KMC hospital, Chennai and he had taken treatment for one week, thereafter he applied plaster of parries in Puthur hospital and another 10 days he took treatment at Shankara hospital for the injury caused in his eyes thereby he suffered with pain and loss

of income. To substantiate the said fact that he was under treatment for one week in KMC hospital and another 10 days treatment at Shankara hospital, the appellant/claimant has not produced any documents before the Tribunal, Ex.P2/the Accident Register is the only document filed by the appellant/claimant before the Tribunal to prove the injuries. It is also seen that no documents were examined from any hospitals with regard to the treatment taken by the appellant. Hence, based on the only document i.e., Ex.P2 the Accident Register, the tribunal has assessed the injuries sustained by the appellant as simple in nature and determined the compensation. The relevant portion is reproduced hereunder.

"மனுதாரர் தரப்பில் தாக்கல் செய்யப்பட்டுள்ள ம.சா.2 மருத்துவ ஆவணத்தை பரிசீலிக்கையில், மனுதாரருக்கு விபத்தில் சொற்ப காயங்கள் ஏற்பட்டதாக தெரிய வருகின்றது. "

9. With regard to the contentions of the appellant that the Tribunal failed to consider the disability assessed by the Medical Board at 15%, it is seen that no such documents were filed to show the disability at 15% assessed by the Medical Board as claimed by the claimant and there is also no discussion made in the said award of the Tribunal. Further, it is contended by the appellant that the Tribunal has ordered for the disability assessment by the Medical Board and the said document was also placed before the Tribunal. In spite of production of the disability certificate issued by the Medical Board at 15%, the Tribunal has not awarded any sum for the disability.

10. On the other hand, the learned counsel for the 2nd respondent/Insurance company has contended that the only document filed before the Tribunal is Ex.P2/ the accident Register. Regarding the evidence placed before the Tribunal for treatment at various hospitals, the appellant/claimant has not filed any single document to prove the nature of injuries sustained by him and the mode and period of treatment given to him. It is further contended by the learned counsel for the 2nd respondent that except the Accident Register, the appellant/claimant has not furnished any documents to substantiate his claim for loss of income, expenses incurred by him for transport, extra nourishment, but the Tribunal has awarded a sum of Rs.40,000/- even in the absence of necessary documents.

11. On hearing the respondent arguments of the respondent and also on perusal of records, it is clear that the appellant/claimant has not placed any documents before the Tribunal and not examined any witnesses to substantiate his claim. But the appellant is making demand before this Court to call for the records and also seeking to remand back the matter to the Tribunal for fresh enquiry.

12. If really the claim of the appellant/claimant in respect of non consideration of the assessment of the Medical Board at 15% is substantiated with the documents or evidence, then this Court has no hesitation to remand back the case to the Tribunal for fresh consideration. But, the appellant / claimant has failed to produce the same. Therefore, the grievance of the appellant/claimant that the Tribunal has directly passed the award without directing the injured to appear before the Medical Board does not require any consideration.

13. On a perusal of records, it is seen that the petition came up for enquiry on 30.08.2018 and the award passed on 05.09.2018. But, the disability certificate now produced is dated 26.03.2018, hence it is very much denied by the 2nd respondent/Insurance Company that for the accident which occurred on 16.06.2014 and the injuries sustained by the claimant in the said accident are very much proved by simple in nature through Ex.P2 Accident register, the disability certificate obtained by the claimant in the year 2018 showing the disability at 15% cannot be acceptable.

14. On a perusal of records, it is observed that the said judgment was passed by the Tribunal on 05.09.2018 i.e. after the date of disability certificate. Therefore, this Court is of the view that, if really the appellant/claimant filed the disability certificate, which he claimed to have obtained as per order of the tribunal, the same would have been very much considered by the Tribunal and pass appropriate award in respect of the disability. Even before this Forum, the appellant/claimant has not filed any relevant documents.

15. Upon hearing the submissions made by both sides and also on perusal of the award of the Tribunal, this Court is of the opinion that if any such document dated 26.03.2018 has been filed before the Tribunal, the same would have been considered. But there is no such reference made in the award. Further, the said assessment made by the Medical Board is dated 29.03.2018 i.e., after 4 years of the accident. Hence, the appellant/claimant without placing any details regarding his grievance before this Court, seeking to remand back of the case to the tribunal is not a proper one.

16. In view of the fact that the observation made by the tribunal that the injuries sustained by him was only simple in nature was based on the evidence and documents and the sum awarded in all heads are also found proper and reasonable, this Court is of the opinion that the prayer sought for by the appellant/claimant seeking remand back his case to the Tribunal for consideration of 15% of disability assessed by the Medical Board cannot be considered.

17. In the result, the award of the Tribunal made in MCOP.No. 633 of 2014 Dated 05.09.2018 is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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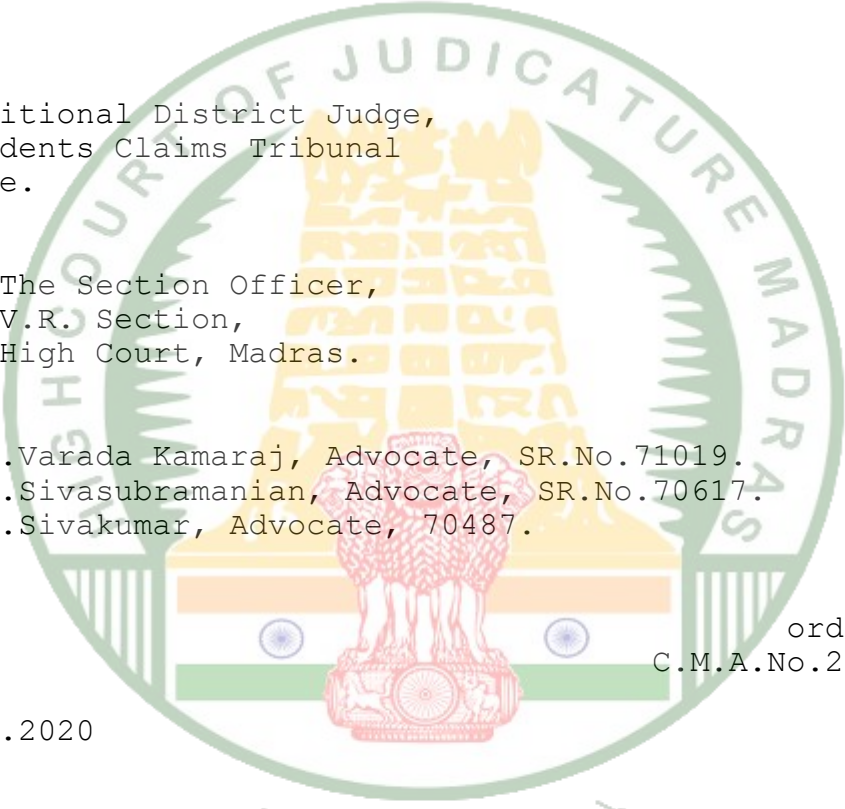
The II Additional District Judge,
Motor Accidents Claims Tribunal
Poonamallee.

Copy to: The Section Officer,
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+1cc to Mr.Varada Kamaraj, Advocate, SR.No.71019.
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MG (CO)
CSR: 05.02.2020

order made in
C.M.A.No.2572 of 2019



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