

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2593 of 2019

T.Kingslin

... Appellant

Vs.

1.E.Vijayaananthan

2.The New India Assurance co. Ltd.,
Motor Third Party Claims Office,
No.232, Bombay Mutual Buildings,
6th Floor, N.S.C. Bose Road, Chennai - 600 001.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2019 made in M.C.O.P.No.3397 of 2016, on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.J.Chandran
for Mr.V.Murali

For R1 : Exparte before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 11.01.2019 made in M.C.O.P.No.3397 of 2016, on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The brief facts leading to the claim petition are as follows:-

i)On 23.04.2016 at about 14.30 hours, when the appellant was standing along at the Maduravoyal Bypass road, Pulikkaradu Kalkuwari, at that time a mini van bearing Registration No. TN 11 2806, driven by its driver in a rash and negligent manner, dashed against the appellant and due to the same, he sustained grievous injuries and underwent treatment which incurred huge medical expenses, loss of income and for all that he claimed the said sum under various heads.

3.The 2nd respondent/Insurance Company denied the mode of the accident stated by the appellant/claimant and the sum claimed by the claimant under various heads are excessive. The 2nd respondent/Insurance Company further contended that the accident occurred due to the negligence of the appellant and he has to prove that there was a valid policy and there was no violation of policy conditions at the time of accident.

4.The Tribunal after analyzing the evidence and documents placed before the same, fixed the liability on the driver of the van bearing Registration No. TN 11 2806. While determining the compensation, the Tribunal has observed Ex.P2/Discharge summary and also the medical records (Ex.P5 and Ex.P6) and by taking the disability at 15% against the disability deposed by P.W.2/Dr.Saravanabavanantham, awarded a sum of Rs.1,64,000/- under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Disability	45,000.00
2.	Pain and suffering	30,000.00
3.	Extra Nourishment	10,000.00
4.	Transport to Hospital	10,000.00
5.	Damage to clothes	1,000.00
6.	Attender's charges	2,000.00
7.	Medical expenses	37,893.00
8.	Loss of income	18,000.00
9.	Loss of amenities	10,000.00
Total		1,63,893.00
Rounded of to		1,64,000.00

5.Aggrieved against the said award, the deceased has preferred this appeal for enhancement.

6.In the ground of the appeal, the appellant/claimant contended that PW2/Doctor assessed the disability with all evidences and proof that was not properly considered and the income fixed by the Tribunal is on the meager side. The sum awarded under various heads are also meager.

7.Heard Mr.R.Nalliyappan, learned counsel for the appellant/claimant and Mr.J.Chandran, learned counsel appearing for the second respondent.

8.The appellant's grievance is that the Tribunal ought not to have reduced the disability assessed by PW2/Doctor. Considering the nature of injury and period of treatment taken as in-patient, the Tribunal ought to have taken 30% disability but determination of Tribunal at 15% disability is not reasonable and prayed for enhancement of compensation.

9.On the other hand respondent contended that the injury sustained is only fracture on the nasal. However, the Tribunal took 15% disability and awarded a sum of Rs.45,000/- at the rate of Rs.3,000/- per percentage which is very much reasonable. The appellant admitted himself as Head Constable but failed to prove the same. The Tribunal has awarded Rs.18,000/- towards loss of income. In the absence of any proof to prove his occupation, the sum awarded under the said head has to be set aside. A sum awarded for the loss of amenities at Rs.10,000/- is also very much objected by the 2nd respondent/Insurance Company and sought for setting aside the award of the Tribunal. It is also observed from the discussion made by the Tribunal that P.W.2/doctor has not treated the appellant but he has issued disability certificate only after 2 years. Hence, the Tribunal has taken as 15% disability and awarded a sum of Rs.45,000/- by awarding Rs.3,000/- per percentage. It is also vehemently argued by the respondent that as per his own admission that he is Police constable he could have claim the medical expenses. The Tribunal has awarded a sum under various heads though in the absence of any loss of income. The Tribunal has awarded Rs.18,000/- towards loss of income and Rs.10,000/- towards loss of amenities. Hence, a sum awarded by the Tribunal is vehemently opposed by the respondent even in the absence of relevant proof. The Tribunal has awarded a huge amount under various heads.

10.On perusal of the records, it is seen that the Tribunal by taking into consideration the fact that the appellant/claimant admitted in the hospital and taken treatment only for a period of 5 days and the disability certificate was issued after 2 years and also considered that PW.2/Doctor is not a Doctor who treated the appellant at the time of accident. Hence, the Tribunal by considering the above aspects, has fixed the disability at 15% and determined the compensation. Since the sum granted under other heads are proper and reasonable and substantiated with the evidence and documents, this Court is of the opinion that, the compensation awarded by the Tribunal at Rs.1,64,000/- under various heads are reasonable and no interference of this Court is required in the said award. Accordingly the same is confirmed.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal as

compensation to the appellant/claimant is hereby confirmed. No costs.

12.The 2nd respondent 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 to the credit of M.C.O.P.No.3397 of 2016. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal.

Sd/-

Assistant Registrar
(Spl Cell-Retd Judges)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+1cc to Mr.R.Nalliyappan, Advocate SR.56796

+1cc to Mr.J.Chandran, Advocate SR.56988

C.M.A.No.2593 of 2019

SVI (CO)
CB(05/02/2020)

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