

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM
C.M.A.No.2711 of 2019

Dineshkumar

Appellant/ Petitioner

Vs

1.Palaniappan

2.The United india Insurance Company Limited
Divisional Office, Hun, Ranga Building,
Perumanur Main Road, Perumanur,
Salem 636 007. Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment in M.C.O.P.No.2164 of 2016 dated 25.01.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Chandran for R2
R1 - Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.2164 of 2016 dated 25.01.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court No.II, Salem. The claimant is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief case leading to the claim petition is that on 10.11.2015, at about 5.00 p.m., when the rider of the Splender pro motor cycle bearing Registration No. TN 34 Q 1738 was proceeding in the Moorpalayam - Kozhikalnatham road, near Meakkadu, the appellant/claimant was a pillion rider, the rider of the said vehicle after letting a way to the unknown car, which came in the opposite direction, riding the said vehicle in a rash and negligent manner and lost his control and fell down on the road along with appellant/pillion rider of the said vehicle, due to which the appellant/claimant sustained severe injuries. The appellant claimed himself as a supervisor and earning a sum of Rs.25,000/- per month. Due to

the said fact, the appellant/claimant met with lot of suffering including loss of income, pain and sufferings, Medical expenses and other related sufferings. The appellant/claimant claimed a sum of Rs.15,00,000/- from the owner of the said vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3.The second respondent/ Insurance Company denied the mode of the accident as stated by the appellant/claimant, the negligence has to be fixed only on the part of the rider of the two wheeler. Apart from that, the sum claimed by the appellant/claimant under various heads are excessive in the absence of any document and proof.

4.The Tribunal after analysing the evidence and document has given up finding that the accident occurred only due to the rash and negligent riding of the first respondent vehicle, who is the owner of the said motor cycle. While determining the compensation, the Tribunal has verified the Wound Certificate(Ex.P2), also assesment given by the Medical Board, Discharge Summary (Ex.P3) and period of treatment underwent by the injured person and medical expense incurred by him and awarded a sum of Rs.1,93,424/- under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Future loss of income	1,00,800.00
2.	Pain and sufferings	5,000.00
3.	Loss of amenities	10,000.00
4.	Medical bills	64,624.00
5.	Transportation	2,500.00
6.	Extra nourishment	5,000.00
7.	Attender's charge	5,000.00
8.	Damage to clothes	500.00
Total		1,93,424.00

5.Aggrieved against the said award, the appellant/claimant has preferred this appeal. In the ground of the appeal, the appellant/claimant contended that the Tribunal has given finding that the accident occurred only due to the rash and negligent riding on the part of the rider of the motorcycle. The sum awarded by the Tribunal as compensation is very meager and it is against the ruling of this Court and Hon'ble Apex Court. The monthly income of the appellant/claimant who is working as a Supervisor in A.V.Tex Power loom and earning a sum of Rs.10,000/- per month and the Tribunal has not considered the same and taken the monthly income at Rs.7,500/-.

6. The other grievance raised by the appellant/claimant is that he admitted for further treatment as in-patient from 10.11.2015 to 25.11.2015, i.e., merely 15 days and surgery was also done to him. In spite of the effective treatment given to him, he could not restore his original health. The award passed by the Tribunal under the heads of loss of amenities, pain and suffering, Transportation, Extra nourishment and attender's charge were not properly considered. Hence, the appellant/claimant sought for enhancement of compensation by modifying the judgment and decree made by the Tribunal.

7. Heard, Mr.T.S.Arthanareeswaran, learned counsel for the appellant and Mr.J.Chandran, learned counsel appearing for the second respondent.

8. On hearing both sides and perusing all the records, it is observed that the appellant/claimant sustained grievous injuries due to the accident and surgery was also done to him. Ex.C1 is the Disability Certificate issued by Medical Board, in which, it has been stated that the appellant/claimant was admitted in the hospital as an in-patient from 10.11.2015 to 25.11.2015. He treated merely 15 days and the nature of injuries are also very much discussed by the Tribunal. The Disability Certificate reveals the fact that the appellant/claimant sustained 20% disability. While taking into consideration, the Tribunal has discussed various decisions of Hon'ble Apex Court and has reduced the functional disability to 5%.

9. It is also seen that the Tribunal has also considered the age of the injured as 31 years at the time of the accident. The appellant/claimant contended that he was working as a Supervisor in A.V. Tex Power loom was earning a sum of Rs.10,000/- per month and the Tribunal has not considered the same and taken the monthly income of Rs.7,500/-, after adding 40% future prospects and applying the multiplier, the future loss of income determined by the Tribunal at Rs.1,00,800/- is proper and reasonable. Regarding medical expenses, the Tribunal has verified the medical expenses (Ex.P4) produced by the claimant for a sum of Rs.64,624/- and awarded the same. The sum awarded under the heads of pain and sufferings, loss of amenities are also very much reasonable. The other aspects such as transportation, extra nourishment, attender's charge and damage to articles are also properly considered by the Tribunal. Hence, this court is not inclined to interfere with the award of the Tribunal.

10. In the result, the award passed by the Tribunal in M.C.O.P.No.2164 of 2016 dated 25.01.2019 is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

Company Limited shall deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS, within a period of two weeks thereon.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vkr

To:

1.The Motor Accident Claims Tribunal,
Special Subordinate Court No.II,
Salem.

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

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 57607

+1cc to Mr.J.Chandran , Advocate SR.No. 56426

C.M.A.No.2711 of 2019

A.SK(03/02/2020)

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