

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.NO.3139 OF 2019

Asrafkhan

.. Appellant/Petitioner

Vs.

1. Mohan

2. The National Insurance Company Ltd.,
Royal Towers, 185/1, Opp: Meyyanur Road,
ARRS Multiplex Theatre,
Salem - 636 004.

... Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.04.2019 made in M.C.O.P.No.357 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

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 25.04.2019 made in M.C.O.P.No.357 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem.

2.The appellant is claimant in M.C.O.P.No.357 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.12.2016. 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 lorry belonging to 1st respondent and directed

the 2nd respondent/Insurance Company to pay a sum of Rs.2,15,570/- 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.

3.The learned counsel appearing for the appellant contended that the award made by the Tribunal is not based on proper principles. The finding of the Tribunal is that the accident occurred only due to rash and negligent driving on the part of the driver of the lorry. The sum awarded by the Tribunal is very meagre against the principles and rulings laid down by this Court and Hon'ble Supreme Court. The other grounds raised by the appellant is that he was working as a load man before the accident and his monthly income was Rs.15,000/- at the time of accident. He was aged about 34 years and these aspects were not considered by the Tribunal. Further contended that the Medical Board examined the appellant and given 20% of permanent disability. He has some difficulties in pulling, pushing and lifting also. The Tribunal has awarded very meagre sum under the heads of transport expenses to the hospital, extra nourishment, attender charges and loss of amenities and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering both oral and documentary evidence in proper perspective, has awarded compensation which is not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as 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/claimant sustained grievous injuries due to the accident. The accident occurred on 28.12.2016, the Tribunal has given a finding that the driver of the 1st respondent's vehicle is responsible for the accident. While determining the compensation claimed by the claimant, the Tribunal has observed the evidence and documents placed before the same, regarding the nature of injuries sustained by the appellant by verifying Ex.P3, Ex.P4 and Ex.P5 which clearly proves that the appellant sustained grievous injuries. The Medical Board assessed the disability of the appellant at 20% by filing disability certificate. The Tribunal has also observed the fact that the appellant was aged 34 years at the time of accident. The appellant was working as a load man and the monthly income taken by the Tribunal at Rs.7,500/- which is very reasonable. Whereas the appellant is very much aggrieved by stating that he was

earning a sum of Rs.15,000/- per month. Taking into consideration of the fact that the appellant was working as a load man and also the probable income he would have been earned and the Tribunal has properly assessed Rs.7,500/- per month. Apart from that, the Medical Board assessed the disability of the appellant at 20% has been taken as such by the Tribunal by taking Rs.3,000/- per percentage and awarded a sum of Rs.60,000/- (Rs.3,000/- x 20%) is very reasonable. The Tribunal has also observed the fact that as per Ex.P5/discharge summary the appellant was treated as in-patient for 6 days. The total sum awarded by the Tribunal are also not excessive warranting interference by this Court.

8.In the result, the Civil Miscellaneous Appeal is dismissed and sum of Rs.2,15,570/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is confirmed. No Costs.

9.The 2nd respondent/ Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.357 of 2018. On such deposit, the appellant/claimant is permitted to withdraw the share of the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Special Subordinate Judge No.1.
Motor Accident Claims Tribunal, Salem.
2. The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.C.Paraneedharan, Advocate, S.R.No.73499

+1cc to Mr.J.Chandran, Advocate, S.R.No.74127

C.M.A.No.3139 of 2019

SPD(CO)

CS/04/03/2020