

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3028 of 2018

N.Sanjeev Kumar

.. Appellant/Petitioner

Vs.

1.V.Selvaraj

2.United India Insurance Company Limited,
Silingi Buildings,
4th Floor, Greams Road,
Chennai 6.

.. Respondents/Respondent

(R1 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.02.2017 made in M.C.O.P.No.2080 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub-Judge No.2 to deal with MCOP case and Full Additional Charge of Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 03.02.2017 made in M.C.O.P.No.2080 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.2080 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. He filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.02.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the second

respondent/Insurance Company, being the Insurer, to pay a sum of Rs.2,94,966/- as compensation to the appellant.

4. Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal failed to consider the nature of the injuries sustained by the appellant in proper prospective. The appellant was examined by P.W.2/Doctor, who assessed and certified the percentage of disability at 60% under three different heads. The Tribunal on erroneous consideration has reduced the same to 45% and granted less compensation for disability. The appellant was working as Imaging Associate at Amazon Private Limited in MGR Salai, SP Infocity, Perungudi and was earning a sum of Rs.18,833/- per month and due to the injuries he lost his income, while he was taking treatment. The Tribunal erred in awarding compensation only for two months. The Tribunal ought to have awarded more compensation for loss of income. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

7. From the materials on record, it is seen that the appellant has suffered facial bone fracture. He has taken treatment in different hospitals in different periods. The Doctor examined by the appellant as P.W.2 was not the doctor who treated the appellant at any point of time. Further P.W.2 has certified that appellant has suffered 15% of disability for the injury in the eye. The learned counsel appearing for the second respondent Insurance Company objected the same before the Tribunal on the ground that P.W.2/Doctor is not an Ophthalmologist and he is not competent to certify the percentage of disability with regard to the injury in the eye. The Tribunal considering the fact that the appellant sustained injuries in the Eyeball, held that he is entitled to get compensation for disability in the eye. Considering the entire materials on record and evidence of P.W.1 and P.W.2, the Tribunal by giving a valid reason, reduced the percentage of disability to 45%. There is no error in the reasoning of the Tribunal warranting interference by this Court.

8. The learned counsel appearing for the appellant contended that the appellant was working as Imaging Associate at Amazon Private Limited in MGR Salai, SP Infocity, Perungudi and was earning a sum of Rs.18,833/- per month. He produced Ex.P10, the copy of the pay slip for the month of February 2013, to the

effect that he was earning a sum of Rs.18,833/- per month. The appellant has not produced any evidence to show that he could not do any work and lost his income during the treatment period. The Tribunal considering the injuries and nature of treatment taken by the appellant, has awarded compensation for two months to the appellant towards loss of income. The same is in order and the appellant is not entitled to any enhancement. Similarly, the amounts awarded by the Tribunal under different heads are not meager and the Tribunal has awarded a sum of Rs.10,000/- for mental torture to the family members in addition to amounts awarded by the Tribunal under the head of Attender charges. In view of the same, the appellant is not entitled to any enhancement.

9. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with accrued 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 award amount along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. Special Subordinate Judge No.1,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

2. The Section Officer,
V.R Section,
High Court, Madras(2 copies)

+1cc to Ms.M.Malar, Advocate sr.no.627

C.M.A.No.3028 of 2018

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nr 07/05/2019