

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1078 OF 2016

R.Selvadurai

.. Appellant/Petitioner

Vs.

1. H.Nemaram
(set exparte in the Trial Court)

2. Oriental Insurance Company Limited,
Motor Third Party Claims-HUB,
No.216, Prakasam Salai, Broadway,
Chennai-600 018. .. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 04.01.2016 passed in MACT.O.P.No.1161 of 2014 on the file of the III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.P.T.Salim Fathima
For Respondents : Mr.N.Sampath for R2
R1-Ex-parte

J U D G M E N T

The appeal is filed seeking enhancement of compensation which was awarded by the tribunal as Rs.40,000/-.

2. The learned counsel appearing on behalf of the appellant mainly contended that the Tribunal has not awarded any compensation for disability, which was assessed by the Doctor as 20%. The learned counsel for the appellant reiterated that the appellant sustained serious injuries and the Doctor also assessed the disability as 20% and therefore, the Tribunal ought to have awarded compensation towards disability.

3. The learned counsel appearing on behalf of the second respondent/Insurance Company disputed the said contention by stating that injury is not a scheduled injury and this apart, it is a contusion in the shoulder and the petitioner has taken treatment for one day and thereafter, there is no proof to establish that he continued his treatment. This apart, the

Doctor certificate itself was disbelieved by the Tribunal on account of the fact that the nature of the injury was minor and not a scheduled injury. This being the factum, the appeal is liable to be rejected.

4. Considering the arguments as well as the findings of the Tribunal, the deposition of P.W2 Doctor has admitted in the course of cross examination that he has not given any treatment to the injured person and also admitted that the injury is not a scheduled injury. The disability certificate has not been issued by the Medical Board and the Doctors given treatment to the petitioner have not been examined as witness in this case. The Doctor also admitted that there is no bony injury caused to the petitioner and also deposed that the petitioner cannot do the auto driving job effectively. The Doctor, during the cross-examination, admitted the fact that percentage of disability may vary 5% from Doctor to Doctor. This being the factum established, the tribunal, by considering the discharge summary as well as the evidence of P.W.2, arrived at a conclusion that the injuries caused on his head and shoulder would not cause any hindrance to his work, since the injuries are not scheduled injuries and therefore, it will not prevent him to perform his job as an auto driver. Thus, the Tribunal has not awarded any further compensation under the head of disability.

5. This Court is of the considered opinion that for awarding the compensation under the head of disability, the courts are bound to consider the nature of injuries sustained, as to whether, it is a scheduled or non-scheduled injury and further, the seriousness and the disability would affect any normal work or not. In other words, the disability and the nature of injury causing any hindrance for performance of regular duty, then alone, grant of compensation under the head of disability is sustainable.

6. This being the factum, this Court do not find any perversity or infirmity in respect of quantum of compensation awarded by the tribunal and therefore, the appellant is not entitled for any enhancement. Accordingly, the judgment and decree dated 04.01.2016 passed in M.C.O.P.No.1161 of 2014 is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssb

To

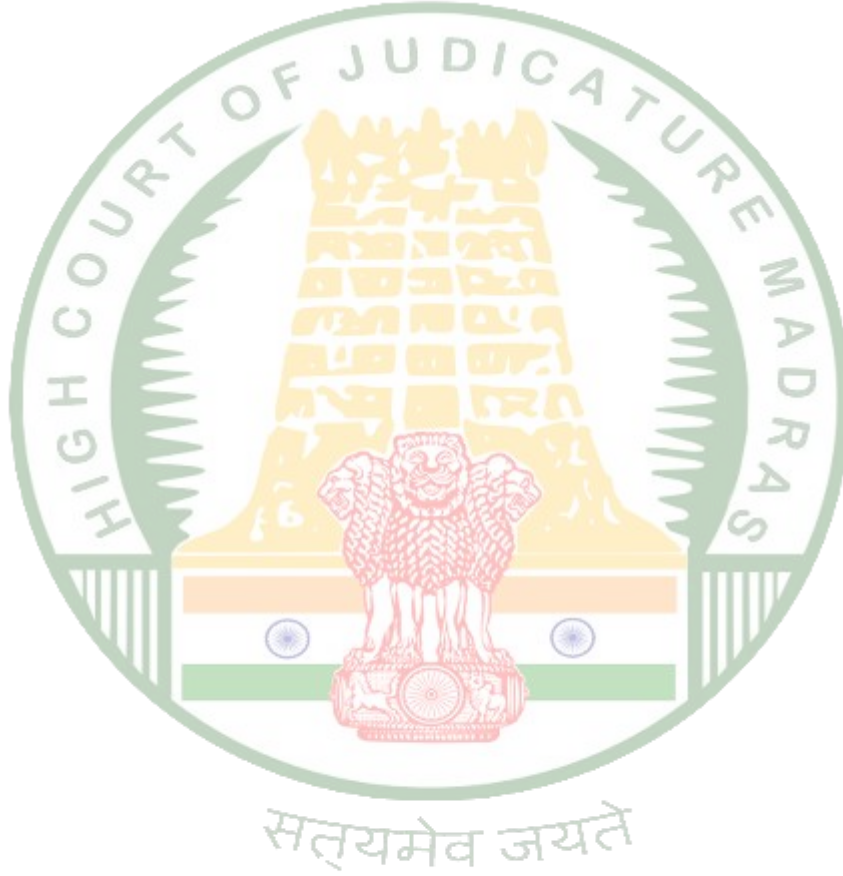
1. The III Judge,
Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.19413

+1cc to Mr.N.Sampath, Advocate, S.R.No.19688

C.M.A.No.1078 of 2016

SS(CO)
CS/25/01/2021



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