

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2108 of 2013

Selvaraj

.. Appellant/Claimant

Vs.

1.Meenakshi Sundaram

(remained exparte before the Tribunal)

2.ICICI Lombard Motor Insurance Co. Ltd.,

No. 84/85, Walltax Road,

Chennai 3.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.08.2012, made in M.C.O.P. No. 753 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. N.M. Elumalai

For Respondents: Ms. R. Sree Vidhya (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 25.08.2012, made in M.C.O.P. No. 753 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P. No. 753 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.02.2011.

3.According to the appellant, on the date of accident, viz., on 13.02.2011, when he was crossing the road from West to East at GST road, sanatorium at pedestrian point, rider of a Hero Honda Motorcycle bearing Registration No. TN-22-BK-6357, riding the vehicle in a rash and negligent manner, endangering public safety, dashed against the appellant and caused the accident. The appellant sustained grievous injuries in the said accident.

The accident occurred only due to the rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent and hence, filed the claim petition against the respondents, as owner and insurer of the said Motorcycle.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent, the appellant was under the influence of alcohol, which was confirmed by the appellant to their Investigator and hence, the appellant also contributed to the accident. The 2nd respondent also denied the existence of valid insurance policy in force, license possessed by the rider of the Motorcycle, and age, avocation, injuries sustained, treatment taken by the appellant, to claim the compensation. The appellant was working in the Metropolitan Transport Corporation and the medical expenses have been met by the said Corporation. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined two witnesses as P.W.1 and P.W.2 and marked 10 documents as Exs.P1 to P10. The respondents did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent as well as the negligence on the part of the appellant and fixed 90% negligence on the rider of the Motorcycle and 10% negligence on the part of the appellant. The Tribunal awarded a sum of Rs.53,524/- as compensation and directed the 2nd respondent-Insurance Company to pay a sum of Rs.48,171/- (90% of the award amount) as compensation to the appellant.

8.Challenging the portion of the award fixing 10% negligence on the part of the appellant and for enhancement of the compensation granted by the award dated 25.08.2012, made in M.C.O.P. No. 753 of 2011, the appellant has come out with the present appeal.

9.Learned counsel appearing for the appellant contended that the Tribunal erred in fixing 10% negligence on the part of the appellant. The Tribunal failed to see that the complainant who was a third party, has given complaint only against the rider of the Motorcycle and there is no contributory negligence on the part of the appellant. The appellant was working as P.T.C. Staff Mechanic in Metropolitan Transport Corporation and was earning a

sum of Rs.12,000/- per month. The appellant suffered head injuries and injuries on the face. The injuries suffered by the appellant has affected his future prospects and the Tribunal ought to have awarded a sum of Rs.80,000/- towards loss of future earning power, as claimed by the appellant. P.W.2 Doctor assessed that the appellant suffered 35% disability. The Tribunal erroneously reduced the percentage of disability to 20% and granted meagre amount as compensation. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent contended that the appellant was under the influence of alcohol at the time of accident. He has admitted the same before the Investigator. The Tribunal considering Ex.P2 - Discharge Summary, held that the appellant also contributed to the accident and fixed 10% contributory negligence and granted compensation under different heads. The appellant has not made out any case for setting aside the 10% negligence fixed on him and for enhancement of the compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the appellant that while he was crossing the road from West to East, the 1st respondent rode the Motorcycle from South to North and dashed against him and caused the accident. To substantiate the said contention, the appellant examined himself as P.W.1 and deposed to that effect. On the other hand, it is the contention of the 2nd respondent-Insurance Company that the appellant was under the influence of alcohol at the time of accident and invited the accident himself. The Tribunal considering the materials on record, especially the discharge summary, held that the appellant was under the influence of alcohol and fixed 10% negligence on the part of the appellant and 90% negligence on the part of the rider of the Motorcycle belonging to the 1st respondent herein. There is no error in the said award of the Tribunal warranting interference by this Court.

13. As far as the quantum of compensation is concerned, it is the contention of the appellant that he suffered head injuries and injuries on the face. To prove the same, he has examined P.W.2 - Doctor and marked Ex.P8 - Disability Certificate. The Tribunal reduced the percentage of disability suffered by the appellant from 35% to 20% on the ground that the injuries suffered by the appellant is not a scheduled injury and no

surgery was performed. The 2nd respondent-Insurance Company did not let in any evidence to disprove the evidence of P.W.2 - Doctor. In view of the same, the appellant is entitled to compensation for 35% disability. The Tribunal has awarded a sum of Rs.1,800/- per percentage of disability. The accident is of the year 2011. The appellant is entitled to compensation towards 35% disability at the rate of Rs.3,000/- per percentage. Accordingly, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,05,000/- (Rs.3,000/- x 35% disability). The appellant has taken treatment as in-patient for a period of two days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment and nature of disability suffered, a sum of Rs.2,000/- and Rs.10,000/- are awarded towards attendant charges and loss of amenities respectively. Considering the nature of injuries, the amounts awarded by the Tribunal towards extra nourishment, transportation and damages to clothes are meagre and hence, the same are enhanced to Rs.5,000/-, Rs.5,000/- and Rs.1,000/- respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	36,000/-	1,05,000/-	Enhanced
2.	Pain and suffering	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	1,000/-	5,000/-	Enhanced
4.	Attendant charges	-	2,000/-	Granted
5.	Transport to Hospital	1,000/-	5,000/-	Enhanced
6.	Medical expenses	5,024/-	5,024/-	Confirmed
7.	Loss of amenities	-	10,000/-	Granted
8.	Damages to clothes	500/-	1,000/-	Enhanced
	Total	53,524/-	1,43,024/-	

90% of the award amount	48,171/-	1,28,722/-	Enhanced by Rs.80,551/-
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14.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.48,171/- is enhanced to Rs.1,28,722/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit Rs.1,28,722/- (90% of the award amount now determined by this Court), along with interest and costs, 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. 753 of 2011. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,47,056/-. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsa
To

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

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

+lcc to Mr.N.M.Elumalai , Advocate SR.No. 18149

+lcc to M/s.Sreevidhya , Advocate SR.No. 19366

C.M.A. No. 2108 of 2013

A.SK(16.02.2021).

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