

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2238 of 2013

Kalaivanan

.. Appellant/Claimant

Vs.

1.C.Ashok

2.Reliance General Insurance
No.628, 2nd floor
Balmer Lawire House
Anna salai, Chennai.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2013 made in M.C.O.P.No.2443 of 2011 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Ms.Sangeetha Rajkumar
for Mr.P.G.Santhosh Kumar

For R2 : Mr.Suresh Srinivasan
for Mr.K.Moorthy

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.01.2013 made in M.C.O.P.No.2443 of 2011 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2443 of 2011 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.04.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Indica car and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.21,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was working as Sub-Inspector of Police attached to J-6, Tiruvanmiyur Police Station at the time of accident. In the accident, he sustained fracture and injuries. Due to the injuries, he was on medical leave from 07.04.2011 to 21.05.2011. The appellant examined P.W.2/Doctor, who examined the appellant and certified that the appellant suffered 35% disability. To prove the same, the appellant filed Ex.P10/disability certificate and Ex.P11/X-ray. The Tribunal ought to have accepted Ex.P10 and awarded compensation for disability. Due to the injuries, the appellant has taken treatment as out-patient for several days and as such, he is entitled to more compensation for disability and pain and suffering. The Tribunal ought to have calculated the compensation as per the loss of income for disability and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has suffered only simple injuries, he has taken only out-patient treatment and the same was proved by Ex.P3/O.P. consultation chit. The appellant has not proved that he suffered injuries and has taken treatment as in-patient in the hospital and he has not filed any discharge summary. The Tribunal considering the materials on record, awarded a sum of Rs.21,000/- as compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

8. From the materials on record, it is seen that after the accident, the appellant has taken treatment as out-patient in Swaram Medicare and Research Centre Private Limited and filed

Ex.P3/O.P.chit. The Tribunal considering Ex.P3 and other documents filed by the appellant, held that the appellant did not suffer any fracture. P.W.2/Doctor has not deposed that the appellant suffered fracture of fibula and underwent surgery. P.W.2/Doctor is not the Doctor who treated the appellant. The Tribunal considering the documents filed by the appellant, did not accept Ex.P10/disability certificate, however, awarded a sum of Rs.20,000/- towards transportation and extra nourishment holding that he would have spent some amount towards transportation and extra nourishment and considering Ex.P6/original bills, granted a sum of Rs.984/- towards medical expenses. The Tribunal has given valid reason for not accepting the disability certificate. Hence, the appellant is not entitled to compensation towards disability. Though the appellant has taken treatment as out-patient in the hospital, due to the injuries, he would have suffered some pain and suffering. Considering the same, a sum of Rs.10,000/- is granted towards pain and suffering. 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 or reduced
1.	Transportation and Extra nourishment	20,000	20,000	Confirmed
2.	Medical expenses	984	984	Confirmed
3.	Pain and suffering	-	10,000	Granted
	Total	20,984 rounded off to 21,000	30,984 rounded off to 31,000	Enhanced by Rs.10,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,000/- is hereby enhanced to Rs.31,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with 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 is permitted to withdraw the award amount along with

interest and costs, less the amount if any, already withdrawn.
No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

kj

To

The V Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy To

The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.P.G.Santhosh Kumar, Advocate SR.No.41931

C.M.A.No.2238 of 2013

VBA (CO)
GMY (04/05/2021)



WEB COPY