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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2901 of 2012

Kullu alias Kandasamy ... Appellant /Claimant

Vs.

1.N. Karthik

2.The IFFICO TOKIO General Insurance Co. Ltd.,
Ponmani Towers,
73, Avarampalayam Road,
New Siddhapudur,
Coimbatore 64.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.06.2012, made in M.C.O.P. No.127 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur.

For Appellant : Mr. M. Selvam

For Respondents: No appearance (For R1)
Ms. K. Saraswathi (For R2)
for M/s. C.R. Krishnamoorthy

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the award dated 13.06.2012, made in M.C.O.P. No.127 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur.

2.The appellant-claimant filed M.C.O.P. No.127 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Harur, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.01.2006.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider-cum-owner of the TVS Super XL and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.13,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 13.06.2012, made in M.C.O.P. No.127 of 2009, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant suffered dislocation of the hip bone and P.W.2-Doctor examined the appellant and assessed that the appellant suffered 35% disability. The appellant examined P.W.2-Doctor and marked Exs.P2, P5 to P7 and proved that he suffered 35% disability. The Tribunal without assigning any reason, reduced the disability to 5%. The Tribunal failed to award amounts under the heads, future loss of earning power and loss of amenities. The amounts granted by the Tribunal for pain and suffering, extra nourishment and transportation are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent contended that the appellant has not proved that he suffered functional disability and hence, he is not entitled to any amount towards loss of earning capacity. The appellant has not produced any case sheet to prove the injuries, but has produced only treatment record from the Hospital which does not state that the appellant suffered fracture. The percentage of disability assessed by P.W.2 - Doctor is excessive. The Tribunal considered both oral and documentary evidence and rightly fixed the disability suffered by the appellant as 5% and granted compensation. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

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

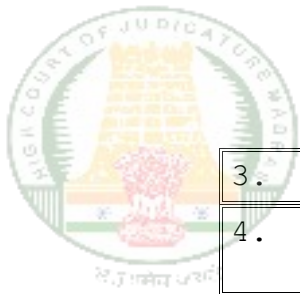
9.From the materials on record, it is seen that the appellant examined P.W.2-Doctor and marked the Disability Certificate and X-ray as Exs.P6 & P7 respectively. The Tribunal considering Ex.P5-Treatment book of Salem Kumara Mangalam



Hospital, held that there is no mention of fracture in the said Ex.P5. P.W.2-Doctor examined the appellant and issued Ex.P6 - Disability Certificate & P7 - X-ray, to show that the appellant suffered 35% disability due to dislocation of hip bone. The Tribunal considered Ex.P7 and held that disability shown in the Ex.P7 - X-ray is not sufficient to prove that the appellant suffered disability of 35%. The Tribunal having held that Ex.P7 shows disability, erred in holding that the said disability will not amount to 35% disability as certified by P.W.2 - Doctor. The Tribunal has not given any reason for not accepting the evidence of P.W.2 - Doctor, a qualified medical practitioner. The respondents did not let in any contra evidence to disprove the evidence of P.W.2-Doctor and the documents filed by the appellant. Considering the materials on record, especially, Exs.P2, P5 to P7, this Court is of the considered view that the Tribunal erred in reducing the percentage of disability from 35% to 5%. The appellant is entitled to compensation for 35% disability. The appellant has not established that he suffered functional disability or loss of earning capacity. Hence, he is not entitled to any compensation for loss of earning capacity. The accident is of the year 2006 and the Tribunal has granted a meagre sum of Rs.1,000/- per percentage towards disability. The appellant is entitled to a sum of Rs.2,000/- per percentage for 35% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.70,000/- (Rs.2,000/- X 35% of disability).

10.From the records, it is seen that the appellant has taken treatment in the hospital for a period of 6 days from 04.01.2006 to 09.01.2006 as in-patient and then he continued as out-patient. The Tribunal has not awarded any amount towards attendant charges, transportation and extra nourishment. Hence, a sum of Rs.7,500/-, Rs.5,000/- and Rs.5,000/- are granted towards attendant charges, extra nourishment and transportation respectively. The amount granted by the Tribunal at Rs.2,000/- towards pain and suffering is meagre and the same is enhanced to Rs.5,000/-. The amount awarded by the Tribunal towards simple injuries is hereby 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	5,000/-	70,000/-	Enhanced
2.	Pain and suffering	2,000/-	5,000/-	Enhanced



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3.	Simple injuries	6,000/-	6,000/-	Confirmed
4.	Attendant charges	-	7,500/-	Granted
5.	Extra nourishment	-	5,000/-	Granted
6.	Transportation	-	5,000/-	Granted
	Total	13,000/-	98,500/-	Enhanced by Rs.85,500/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.13,000/- is enhanced to Rs.98,500/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced 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.127 of 2009. 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.85,500/-. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Harur.

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

C.M.A.No.2901 of 2012

srg 03/09/2021