

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1954 of 2016

R.Karunanithi

.. Appellant/Petitioner

Vs.

1.M/s.Nagulan Logistics Services,
No.221, II Floor, Linghi Chetty,
Chennai - 600 002.

2.Bajaj Allianz General Insurance Co., Limited,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam,
Chennai - 600 034. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.2261 of 2013 dated 02.04.2016 on the file of the III Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents: M/s.C.Harini
for M/s.M.B.Gopalan Associates
for R2
R1 exparte

J U D G M E N T

The appeal is preferred by the claimant seeking enhancement of compensation.

2. The accident occurred on 09.04.2009 at about 11.25 pm at Chennai Trichy Highways near Ayyur-Agaram over bridge. Villupuram Police Station registered a case in Crime No.275 of 2009.

3. The appellant/claimant sustained grievous injuries of fracture in his right forearm and multiple injuries all over the body. The claim petition was filed for a compensation of Rs.13,00,000/-. The Tribunal adjudicated the issues with

reference to the documents as well as the evidences produced. As far as the liability is concerned, the Tribunal arrived at a conclusion that the driver of the car, who was driving the same in a very rash and negligent manner endangering the public safety, at the time of accident. Thus, the first respondent insurer of the car and the 2nd respondent Insurance Company is liable to pay compensation to the claimant. The Tribunal had taken an effort to quantify the compensation with reference to the nature of injuries sustained as well as the other factors.

4. P.W.2 Doctor during the cross examination admitted that he has not given any treatment to the claimant and the disability certificate was not issued by the competent Medical Board. The Doctor further admitted that the injury is not a scheduled injury, therefore, the Tribunal arrived at a conclusion that 40% disability given by the Doctor cannot be taken as it is and accordingly, it is taken as 30% disability for quantifying the compensation.

5. As far as the said fixation is concerned, the learned counsel appearing for the appellant made a submission that the Doctor Thiagarajan, who was examined before the Tribunal as P.W.2 is a well known retired Professor of Orthopaedics in Stanley Medical College Hospital, Chennai and even in the case of G.Gnanam V. Metropolitan Transport Corporation reported in (2009) 2 SCC 71, the Hon'ble Supreme Court referred his name and accepted the disability certificate issued by the said Doctor J.R.R.Thiagarajan.

6. This Court is of the considered opinion that mere observations made in this regard by the Supreme Court cannot be taken as far as the percentage of disability assessed by the Doctor is concerned. In fact the said Doctor Thiagarajan has not treated the appellant/claimant. Therefore, the Tribunal would be right in reducing the percentage of disability, however 10% reduction will be little excess, this Court is inclined to reduce the percentage from 40% to 35%. This being the factum, the compensation granted under the head of disability is to be enhanced. Accordingly, 30% disability assessed by the Tribunal is increased as 35% and the appellant/claimant is entitled to get Rs.1,05,000/- as compensation for the disability of 35%. Thus, the total compensation payable to the appellant/claimant is Rs.2,07,184/-. Awarded amount by the Tribunal had already been deposited, the appellant/claimant also withdrawn the said amount. Thus, the 2nd respondent Insurance Company is directed to deposit the enhanced compensation with accrued interest at the rate of 7.5% per annum with a period of six weeks from the date of receipt of a copy of this judgement. On such deposit, the

appellant/claimant is permitted to withdraw the said amount by filing an appropriate application and the payments have to be made through R.T.G.S. The appellant/claimant is permitted to pay additional Court fee.

7. Accordingly, this Civil Miscellaneous Appeal is Partly allowed. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

ms

To

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

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

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.20535

+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.20771

C.M.A.No.1954 of 2016

RSV (CO)

GMV (18/08/2020)

सत्यमेव जयते

WEB COPY