IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

CORAM

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

C.M.A.No.2288 of 2016

Kanickai Raj ...Appellant/Petitioner

Vs.

1.R.Deenadayalan

2.M/s.United India Insurance Company Limited,
No.70, N.S.C.Bose Road,
Sowcarpet, Chennai-79. ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 16.03.2016 passed in M.C.O.P.No.4893 of 2009 on the file of Motor Accidents Claims Tribunal (VI Small Causes Court), Chennai.

For Petitioner : Mr.S.Partheeban

For Respondents : Non-appearance for R1
Mr.C.Paranthaman for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 16.03.2016 passed in M.C.O.P.No.4893 of 2009 on the file of Motor Accidents Claims Tribunal (VI Small Causes Court), Chennai.

2. The accident occurred on 15.10.2008 and the appellant/claimant sustained severe head injury, clavicle fracture, Right side leg tibia bone fracture, Right side hand fracture and multiple injuries all over the body. The claimant was admitted in the Government Hospital and treated as inpatient from 15.10.2008 to 24.10.2008.

3. The learned counsel appearing on behalf of the appellant mainly contended that the assessment of disability of 5% made by the Tribunal is erroneous, in view of the fact that the Doctor assessed the disability as 75%, as per the disability certificate/Ex.P6 and the Tribunal has reduced the disability from 75% to 5%.

4. The learned counsel appearing on behalf of the respondent/Insurance Company made a submission that the discharge summary of the Government hospital has not been marked as a document. The Doctor evidence was disbelieved by the Tribunal and the manner, in which, the disability was assessed by the Doctor, was also not taken by the Tribunal, in view of the fact that certain findings made in the disability certificate is contrary to the treatment taken by the claimant in the present case. Thus, the tribunal fixed the disability as 5%.

5. Considering the facts and circumstances, this Court is inclined to consider the findings of the Tribunal wherein the tribunal considered all the documents elaborately. With reference to the assessment of the disability, the tribunal held as follows:

> Hence, in these circumstances this tribunal is of the considered view that P.W.2 has not assessed properly as required by medical Code and also without following the guidelines for assessing the disability. Further, P.W.2 has not enclosed the worksheet for his assessment. Therefore, the Tribunal is not inclined to accept the 75% disability certificate-Ex.P.6. As observed earlier and mentioned above, on considering of Ex.P3, this Tribunal is of the considered view that the lacerated injury over the left parietal region was sutured and the sutures was removed after seven day. Though, no medical records produced by the petitioner for the treatment taken for the art fibula fracture, on perusal of Ex.P7, X-ray film left leg AP and lateral view, the upper 1/3rd fracture of fibula has been united. So the left fibula fracture upper 1/3 rd is completely cured. And the left clavicle fracture also being treated and there is no malunion on perusal of the X-ray film left clavicle AP Ex.P.7, though P.W.2 has stated in his proof affidavit and disability certificate that there is malunion. Therefore, if it all any inconvenience that would arise to the petitioner/injured is due to the restriction in the range of movements of the left shoulder. Though the P.W.2 has stated fibrosis abduction 80, the other range of movements not mentioned. Therefore, even accepted for the maximum movements restriction, the disability will not exceed 30% of the left arm ROM, then the mobility, stability has to be considered to determine the disability, but these factual procedures has not been appears to be followed by the P.W.2. Therefore, this Tribunal inclined to take 5% as disability. Further, this Tribunal has to determine that whether this 50% disability will leads to any loss of income of the

petitioner, the petitioner claims to be a auto driver, therefore this Tribunal consider for assessing the loss of income inclined to take 10% at the rate of Rs.3,000/- for single percentage.

6. The finding of the Tribunal reveals that the assessment of disability made by the Doctor was disbelieved and the reason stated by the Tribunal is also convincing. However, the Tribunal made a finding at one point that "even accepting the maximum movements restriction, the disability will not exceed 30% of the left arm ROM, then the mobility, stability has to be considered to determine the disability, but these factual procedures has not been appears to be followed by the P.W.2". In view of certain doubts raised by the tribunal, the tribunal arrived at a conclusion that 5% would be appropriate. However, this Court is of the considered opinion that the accident is admitted, treatment is also established by the claimant, policy coverage is also established and, with reference to disability and considering the nature of injuries as well as treatment taken as in-patient by the claimant, this Court is inclined to increase the percentage of disability from 5% to 30% so as to enhance the compensation. Accordingly, 30% of the disability is assessed and the accident occurred, during the year 2008, therefore, a sum of Rs.2,000/- per percentage would be appropriate. Thus, the claimant is entitled for a compensation of Rs.60,000/- under the head of disability. With reference to compensation awarded in other heads, this Court is not inclined to interfere with. Thus, the total compensation of Rs.1,07,000/- awarded by the tribunal is enhanced to Rs.1,52,000/-. The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interest, if not already deposited, along with enhanced compensation at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the entire amount with accrued interest by filing appropriate application and the payments are to be made through RTGS. The appellant is liable to pay the additional court fee.

7. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal (VI Small Causes Court),
Chennai.

+2cc to M/s.C.Paranthaman, Advocate Sr.20299
+1cc to M/s.S.Partheeban, Advocate Sr.20388

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srg 07/05/2021