

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.319 of 2016
(Heard through video conferencing)

Sarathkumar,
S/o.Dhanasekaran,
No.7/93-D, Pananthoppu,
Sengodampalayam, O.Rajapalayam Post,
Tiruchengode Tk., Namakkal District.Appellant/Petitioner
Vs

1.Periyasamy,
S/o.Kaliyan,
23/5, Weavers Colony, Street No.5,
Tiruchengode Taluk, Namakkal District,

(Notice to R1 may be dispensed with for the
set ex parte before the Tribunal)

2.Shri Ram General Insurance Co. Ltd.,
2nd Floor, Rear Portion,
Nagappa Complex,
1076, Coimbatore.Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 04.11.2015 made in M.C.O.P.No.127 of 2013 on
the file of the Motor Accidents Tribunal, Sub Court,
Tiruchengode.

For Appellant :Mr.Arthanareeswaran
for Mr.C.Paraneedharan
For R1 : Exparte
For R2 : Mr.S.Dhakshnamoorthy

JUDGMENT

This civil miscellaneous appeal has been filed against the
decree and judgment dated 04.11.2015 passed in M.C.O.P.No.127
of 2013, on the file of the Motor Accidents Tribunal, Sub Court,
Tiruchengode.

2. Heard the learned counsel for the claimant/appellant and the learned counsel for the second respondent. The first respondent set exparte before the Tribunal.

3. This appeal has been filed by the claimant /appellant not being satisfied with the award passed by the Tribunal for the injuries sustained by him in the motor accident. The claimant/appellant is a Loadman aged about 20 years at the time of accident. While proceeding in his Two wheeler on 21.03.2013 from Tiruchengode to Kozhikalnatham road, when he was nearing Sengodampalayam, a Tata Ace bearing registration No.TN.34.F.3106 dashed against him causing injuries on his hands and legs. The accident occurred due to the negligence on the Tata Ace Driver and therefore, a criminal case was registered against him. The injured person preferred the claim seeking compensation for a sum of Rs.5,00,000/- for the injuries sustained by him.

4. Before the Tribunal, the claimant has examined the Doctor who treated the injured person/claimant for establishing the disability and marked 10 documents. The Tribunal considering the claim and the evidence, has awarded a sum of Rs.58,831/- towards compensation on the different heads. This appeal is preferred on the ground that the disability assessed by the Doctor fixed at 23%, whereas, the Tribunal has reduced it to 10% and awarded only a sum of Rs.20,000/- for the disability, which is very low.

5. The learned counsel for the claimant/appeallant would submit that the nature of injury sustained by the claimant is Proximal Phalanx on the right hand little finger and bony tenderness over the 5th Meta carpal. Being a Loadman, the injured has lost his ability to carry on his work therefore, the Tribunal ought to have awarded adequate compensation for the said disability. Further, the learned counsel would also submitted that the claimant has lost his earning power due to the injury and for the pain and suffering undergone by him, the Tribunal has not awarded an adequate amount.

6. Per contra, the learned counsel appearing for the Insurance Company/ second respondent would submit that the injuries sustained by the claimant as spoken by the Doctor who infact not treated the claimant but only examined the claimant has stated that the movement of the claimant's right hand 5th Metacarpal was restricted due to the fracture of the little finger. As per the Schedule under the Workmen's Compensation Act, the fracture of the little finger is a permanent disability at only 7% whereas, the Tribunal has fixed the disability at 10%. Therefore, there is no error in the award passed by the Tribunal. PW-2/Doctor has deposed that the claimant was treated in the Government Hospital where, the treatment is free of cost therefore, the learned counsel would submit that the award

passed by the Tribunal requires no interference at the hands of this Court.

7. From the perusal of the award and the evidence made by the claimant/appellant, it is seen that the claimant has sustained injuries in the road accident on 21.03.2103 and was hospitalised for six days. The evidence indicates that he has sustained fracture on his right hand little finger. The Tribunal has fixed his daily wage at Rs.200/- per day and awarded compensation for loss of earning during the treatment period. The compensation fixed for the treatment period is enhanced from a sum of Rs.1000/- to Rs.3000/-. Though, it is contended by the learned counsel for the claimant/appellant that for disability, additional compensation should be awarded, this Court is not convinced by the said submission taking note of the nature of the injury sustained by the claimant. However, for the pain and suffering, the Tribunal has awarded a sum of Rs.2,000/- which is enhanced to a sum of Rs.10,000/-. Except the above two modification, the award passed by the Tribunal in all other aspects stand confirmed as shown below:-

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning	1,000	3,000	Enhanced
2.	Transportat ion	3,000	3,000	Confirmed
3.	Extra nourishment	2,000	2,000	Confirmed
4.	Medical expenses	28,831	28,831	Confirmed
5.	Pain and suffering	2,000	10,000	Enhanced
6.	Permanent Disability	20,000	20,000	Confirmed
7.	Loss of Earning Power	2,000	2,000	Confirmed
	Total	58,831	68,831	Enhanced by Rs.10,000/-

8.The second respondent Insurance Company is directed to deposit the above enhanced award amount with 7.5% interest from the date of numbering the petition till the date of realisation to the M.C.O.P., account within a period of eight weeks from the

date of receipt of a copy of this Judgment and on such deposit being made, the claimant/appellant is directed to withdraw the same by filing appropriate petition before the Tribunal. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

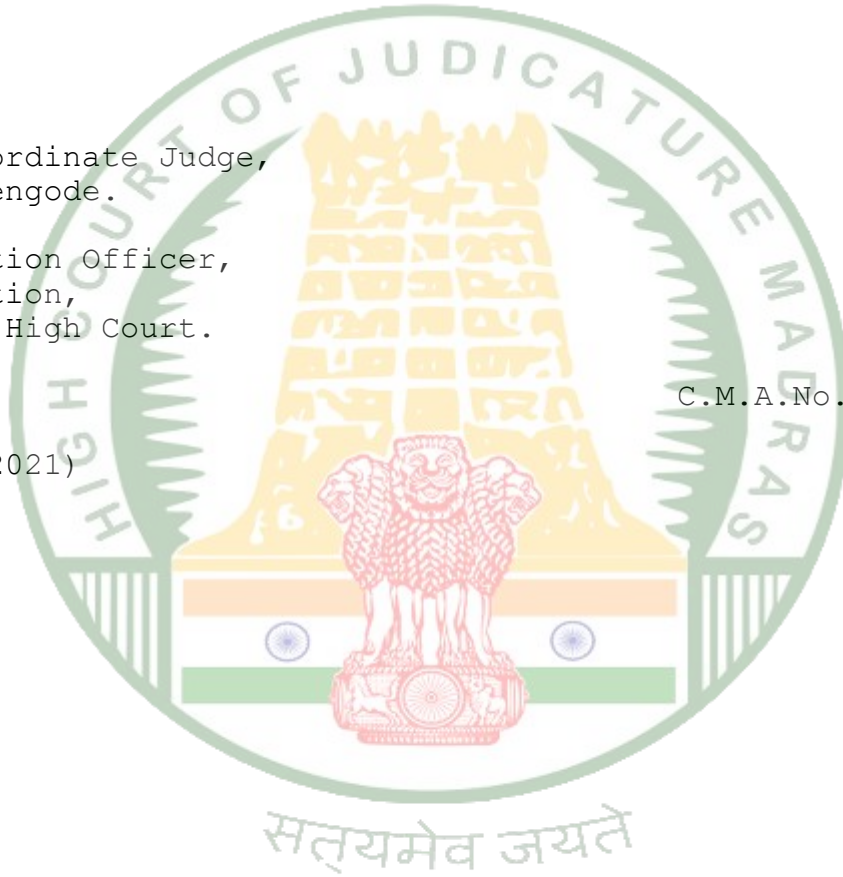
rst/jbm

To

- 1.The Subordinate Judge,
Tiruchengode.
- 2.The Section Officer,
VR Section,
Madras High Court.

RSK(CO)
CB(19/04/2021)

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