

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2586 of 2019

S.Masthan

.. Appellant/Petitioner

vs.

1. J.Sampath Kumar

2.ICICI Lombard General Insurance
Company Limited,
Chhotabhai Centre, No.140,
Nungambakkam High Road,
Chennai - 600 034

.. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.03.2019 in M.C.O.P.No.744 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : R1 - Vacated

R2 - M/s.R.Sreevidya

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 06.03.2019 passed in M.C.O.P.No.744 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2. The appellant is the claimant and the Claim Petition is filed on the ground that on 10.01.2016 at 11.00 hours, when the petitioner was riding the Motorcycle bearing Regn.No.TN-22-U-4291 along the Velachery Thandeeswaram 3rd Main Road in front of Balaji Store, at that time the Motor cycle bearing Regn No.TN-07-BX-3154 came from South to North

direction in a rash and negligent manner without following the traffic rules and regulations and dashed against the claimant's Motor cycle. Consequently, the appellant/claimant sustained grievous injury.

3. The copy of the F.I.R is marked as Ex.P12, to establish the accident. The rider of the Motor Cycle bearing Registration No.TN-07-BX-3154 was shown in the accused column in the F.I.R. However, during the trial, the 2nd respondent has not disproved the version of the claimant and based on the documents as well as the evidences produced before the Tribunal, the Tribunal arrived a conclusion that the accident had occurred due to the rash and negligent driving of the rider of the Motor Cycle bearing Regn.No.TN-07-BX-3154.

4. Regarding the quantum of compensation, the learned counsel for the appellant/claimant mainly contended that the appellant/claimant sustained grievous injuries and he is immobile at present. The Tribunal has not granted proper compensation and the appeal is to be allowed by enhancing the compensation. The appellant/claimant has taken continuous treatment and he is unable walk freely and his body movements are crippled.

5. The learned counsel appearing on behalf of the 2nd respondent/Insurance company disputed the arguments advanced by the learned counsel for the appellant by stating that it is a case of simple injury and the document assessed the disability as 30%. The assessment of disability is not serious any question. The appellant/claimant was aged about 60 years at the time of accident. He sustained Grade IIIa Compound Fracture Both Bone Right Leg Distal and the injury is grievous. However, the fact remains that the P.W.1/Doctor, who is treated the appellant/claimant was not examined before the Tribunal. Ex.C1/Disability Certificate issued by the Regional Medical Board, Government Kilpauk Medical College is marked and therefore, the Tribunal has taken the disability of 30% as it is and not reduced disability.

6. Apart from the disability compensation, the Tribunal has granted 30,000/- towards Pain and Suffering, Rs.5,000/- for Transportation, Rs.1,53,869/- for Medical Expenses, Rs.20,000/- towards Extra-nourishment, Rs.18,750/- for Attender Charges, Rs.70,000/- for Loss of Earnings and Rs.30,000/- towards Loss of Future Prospects is also awarded.

7. The appellant/claimant is aged about 60 years. Perusal of the Claim Petition reveals that the appellant was a business man and his monthly income was

Rs.20,000/- per month. However, there is no document to establish the said factum. In the Claim Petition, the claimant has mentioned his occupation as business. The nature of business, the details regarding the business, nothing has been stated in the Claim Petition. Even during the Trial, the claimant has not established his nature of business as well as the details regarding the business. There is no concrete proof to establish his income.

8. This being the factum, the Courts cannot presume the nature of business or the monthly income. Certain inferences can be drawn based on the facts and circumstances. However, with regard to the appellant/claimant, who was aged about 60 years at the time of accident, such presumption is impermissible.

9. This being the factum, this Court is of the considered opinion that the compensation awarded by the Tribunal is in accord with the principles and there is no perversity or error so as to intervene. Accordingly, the Judgment and Decree dated 06.03.2019 made in M.C.O.P.No.744 of 2016 stands confirmed and Consequently, the Civil Miscellaneous Appeal in C.M.A.No.2586 of 2019 stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.

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

CMA No.2586 of 2019

CA(CO)
CB(29/04/2021)