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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 09..12..2020

Judgement Pronounced on: 17..12..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1605 of 2020

K.Sakthivel ... Appellant/Petitioner

-Versus-

1.V.Dillikumar

2.Bajaj Alliance General Insurance Company Limited,
No.528, P.H.Road,
Arumbakkam,
Chennai 600 106.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 11.12.2019 made in M.A.C.T.O.P.No.7754 of 2014 by the Special Court-I, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : Mr.T.K.Premkumar for R2

JUDGEMENT

The appellant, who was the claimant before the tribunal, feeling aggrieved by the inadequacy of compensation granted by the tribunal, has come forward with this Civil Miscellaneous Appeal.

2. It is a case of injury. According to the appellant, on 12.09.2014 at about 08.00 a.m. he was riding on his TVS XL motor cycle on Chengalpattu - Thirukazhukundram Main Road. While he was nearing one R.K. Company, a Maruti Omni Van bearing Regn. TN 19 E 6783, owned by the 1st respondent and insured with the 2nd respondent, which was being driven by its driver at a high speed in a rash and negligent manner, dashed behind his motor cycle as a result of which, he was thrown off and sustained serious injuries. He was taken to one Parvathy Hospital for treatment. Thereafter, he was shifted to Kumaran Hospital where he had undergone a surgery for the compound fracture of both bones of left forearm. He was hospitalized for more than 13 days. At the time of accident, he was 44 years old. By working as a butcher



(chicken chopper) in a chicken stall, he was getting a salary of Rs.15,000/- per month. Due to the injuries sustained in the accident, he is unable to continue his avocation which resulted in loss of future earning capacity. Hence, he filed the petition claiming compensation of Rs.20,00,000/- from the respondents.

3. The 1st respondent, owner of the omni van contested the claim petition contending that the appellant himself was negligent for the accident and it was he who hit against the car negligently in which the car got damaged. The car was immediately surrendered before the Motor Vehicle Inspector. The MV report would show that due to the rash and negligent riding of the motor cycle only the accident was occurred.

4. The 2nd respondent filed their counter affidavit contending that the accident was taken place due to the negligence of the appellant. The 2nd respondent also disputed the injuries and the monthly income of the appellant.

5. Before the tribunal in order to prove his case, the appellant himself examined as P.W.1 and marked as many as 14 documents as Exs.P.1 to P.14. On the other side, the 1st respondent (owner of the omni van) examined himself as R.W.1 and marked the insurance policy pertaining to the omni van as Ex.R.1 and on the side of the 2nd respondent, the Legal Executive of the Insurance Company was examined as R.W.2 and three documents were marked as Exs.R.2 to R.5. Pending trial, the appellant was referred to the medical board by the tribunal for the purpose of assessment of disability suffered due to the injuries sustained in the road accident and the disability certificate issued by the medical board was marked as Ex.C.1. On considering the materials available on record, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the 1st respondent's driver and the vehicle was being covered by insurance, the 2nd respondent insurance company is liable to compensate the appellant/claimant. Insofar as the quantum of compensation is concerned, after having fixed the monthly income of appellant as Rs.8,000/- p.m. the tribunal held that the appellant is entitled to sum of Rs.75,000/- towards disability at the rate of Rs.3,000/- for 25% of disability. That apart, the tribunal awarded a sum of Rs.245,714/- rounded to Rs.2,45,750/- under the conventional heads. In all, the tribunal awarded a sum of Rs.3,20,750/- as compensation. Feeling dissatisfied with the quantum of compensation, the claimant has come forward with the instant appeal.

6. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

7. This is a claimants' appeal. Therefore, it is not necessary to narrate the facts in details such as how the



accident occurred and who was negligent for the reason that findings on these aspects have already been recorded in favour of the claimants by the tribunal and the same have not been under challenge at the instance of any of the respondents either by way of cross appeal or cross objection.

8. So, the question that arise in this appeal is, whether any case for enhancement is made out and if so , to what extent.

9. The accident was taken place on 12.09.2014 in which the appellant sustained fracture of both bones of left forearm. The appellant was assessed to have suffered permanent disability to the extent of 25%.

10. The learned counsel for the appellant would contend that the appellant was working as Chopper in a Chicken Stall and due to the fracture sustained on his left forearm he could not rotate his forearm and to continue his avocation as before. The disability suffered by the appellant is permanent and irrecoverable in nature and therefore, for the loss of future earning capacity, the appellant is entitled for adequate compensation.

11. From a careful perusal of the evidence, it could be seen that both the bones of left forearm of the appellant had been fractured in the road accident and the appellant had undergone a surgery. The medical board had assessed the disability at 25%. However, the disability said to have been suffered by the appellant is only partial permanent. There is no other evidence available on record to show that the appellant suffers permanent disability which prevents him from continuing his avocation. The accident was occurred in the year 2014 and the appellant was working as Chopper in a Chicken Stall. Considering all these aspects of the matter, this court is of the considered view that awarding a sum of Rs.1,00,000/- at the rate of Rs.4,000/- for each percentage of disability for 25% partial permanent disability in the place of Rs.75,000/- (Rs.3,000 x 25) awarded by the tribunal would be fair and reasonable.

12. The appellant was hospitalized thrice and was taken treatment for about 13 days. Considering the nature of the injury sustained and the period of hospitalization and other circumstances, compensation of Rs.25,000/- awarded by the tribunal towards pain and suffering could be enhanced to Rs.30,000/- and the compensation of Rs.3,250/- awarded by the tribunal towards attender charges could be rounded Rs.3,500/-. The amounts awarded by the Tribunal under the other heads appears to be fair and adequate and hence the same stand confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability	75,000	1,00,000	Enhanced
2.	Pain and Sufferings	25,000	30,000	Enhanced
3.	Transportation	5,000	5,000	Confirmed
4.	Medical Expenses	1,58,464	1,58,464	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Attender Charges	3,250	3,500	Enhanced
7.	Loss of Earnings	24,000	24,000	Confirmed
8.	Loss of Future	20,000	20,000	Confirmed
	Total	3,20,714	3,50,964	Enhanced by Rs.30,214/-
	Rounded off to	3,20,750	3,50,000	

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,20,750/- awarded by the Tribunal is hereby enhanced to Rs.3,50,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above along with interest and costs ordered in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is at liberty to withdraw the same by making appropriate application before the tribunal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

kmk

To

The Special Court-I,
Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.



Copy To

The Section Officer,
VR-Section,
High Court of Madras,
Chennai.

+1cc to M/s.M.Malar, Advocate SR.No.41784

+1cc to Mr.T.K.Premkumar, Advocate SR.No.41666

C.M.A.No.1605 of 2020

MG (CO)
GMY (25/08/2021)