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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1854 of 2020

Paramanantham,
S/o. Muthu,
No.72/23, Muthamman Koil Street,
Ayanavaram,
Chennai-600 023.

... Appellant/Petitioner

Vs.

1. A.Manohar,
S/o. Anbu,
No.66, Kannabiran Koil Street,
Pallavaram,
Chennai - 600 043.

2. United India Insurance Company Limited,
No.134, Silingi Building,
4th Floor, Greams Road,
Chennai-600 006.

...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree passed in M.C.O.P. No.4774 of 2016, dated 08.08.2019 on the file of the Motor Accident Claims Tribunal, (Special Sub-Court No.2, Motor Accident Claims Petitions), Court of Small Causes, Chennai.

For Appellant : Mr.S.Ravikumar
For Respondents : R1 - exparte
Mr. J.Chandran
for R2

J U D G M E N T

The claimant, not feeling satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Special Sub-Court No.2, Motor Accident Claims Petitions), Court of Small Causes, Chennai in MCOP No.4774 of 2016, has filed the present Civil Miscellaneous Appeal before this Court seeking enhancement of compensation.



2. The brief facts leading to the filing of this Civil Miscellaneous Appeal is as follows :

On 25.12.2015, at about 05.00 p.m., while the claimant was riding his two wheeler in Ambattur-Redhills road, a Tata Majic Van bearing Regn. No.TN-22-CA-0604 owned by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against the claimant's two wheeler, in which he has sustained serious injury. He was admitted in the Government Hospital and taken treatment for three days. Even after treatment, he is still suffering post traumatic stiffness of right shoulder and he could not move his shoulder freely. Due to the injuries sustained in the accident, claiming a compensation of Rs.6 lakhs, he has filed the claim petition before the Tribunal.

3. The 1st respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition on the ground that the accident has taken place only due to the rash and negligent driving of the claimant himself and he cannot claim any compensation from the 2nd respondent insurance company. That apart, he has to prove that the driver of vehicle has a valid driving license and the vehicle was duly insured with the 2nd respondent.

4. Before the tribunal, the Appellant/claimant examined himself as P.W.1 and marked as many as 8 documents as Ex.P1 to P8. On the side of the respondents, three witnesses were examined and marked as many as 6 documents as Ex.R1 to R6. The disability certificate issued by the medical board was marked as Ex.P1.

5. The Tribunal, after considering both the oral and documentary evidence, has come to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the offending Tata majic van. At the time of accident, since the driver of offending vehicle did not have a valid driving license, the liability is to be fixed on the 1st respondent owner. However, the insurance company was directed to pay the compensation and recover the same from the owner of the vehicle. In respect of quantum of compensation, the Tribunal has held that the medical board had assessed the disability at 15%, awarded a sum of Rs.3000/- per percentage and arrived a sum of Rs.45,000/- towards the disability. In respect of other heads, the Tribunal has awarded a sum of Rs.1000/- towards pain and sufferings, a sum of Rs.1,000/- towards transport expenses, a sum of Rs.1000/- towards extra nourishment, a sum of Rs.500/- towards damages to clothes and articles, a sum of Rs.500/- towards attender charges and a sum of Rs.1000/- towards medical



expenses. Totally, the Tribunal has awarded a sum of Rs.50,000/- as compensation. Not satisfied with the same, the claimant is before this Court with this Appeal.

6. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as 2nd respondent and perused the records.

7. From the perusal of records, it could be seen that the appellant has sustained shoulder injury and he was admitted as inpatient in the hospital for three days and undergone treatment. The Medical Board has assessed the disability of the appellant and stated that he is having post traumatic stiffness of right shoulder due to soft tissue injury and assessed disability at 15%. The Tribunal has awarded a sum of Rs.3000/- per percentage and granted a sum of Rs.45,000/- towards disability. Considering the nature of injury sustained by the appellant, even after surgery, he is having stiffness in the shoulder and he is not able to move the same freely, this Court is inclined to fix a sum of Rs.4000/- per percentage of disability and a sum of Rs.60,000/- is granted towards disability. As the petitioner has undergone a treatment for long time, a sum of Rs.10,000/- is granted towards pain and suffering instead of Rs.1000/- awarded by the Tribunal. Towards transport expenses, a sum of Rs.5000/- is granted instead of Rs.1000/-, a sum of Rs.5000/- is granted towards extra nourishment instead of Rs.1000/-, a sum of Rs.1000/- is granted towards damages to clothes and articles instead of Rs.500/-, and a sum of Rs.1000/- is granted towards attender charges instead of Rs.500/- as awarded by the Tribunal. As the claimant was admitted in the hospital and taken treatment, a sum of Rs.5000/- is granted towards medical expenses instead of Rs.1000/- as awarded by the Tribunal. Since the appellant has suffered injury and taken treatment for two months, no amount was granted towards loss of income. Hence, a sum of Rs.13,000/- is granted towards loss of income for two months. In the said circumstances, the compensation awarded by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Disability	45,000	60,000	enhanced
2	Pain and suffering	1,000	10,000	enhanced
3	Transport expenses	1,000	5,000	enhanced



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
4	Extra nourishment	1,000	5,000	enhanced
5	Damages to clothes and articles	500	1,000	enhanced
6	Attender charges	500	1,000	enhanced
7	Medical expenses	1000	5,000	enhanced
8	Loss of income	Nil	13,000	granted
	Total	50,000	1,00,000	enhanced

Thus, the appellant is entitled to get a sum of Rs.1,00,000/- as compensation, instead of Rs.50,000/- awarded by the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.50,000/- is hereby enhanced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle viz., 1st respondent in the manner known to law. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Special Sub-Court No.2,
Motor Accident Claims Petitions,
Court of Small Causes, Chennai.



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

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+1CC to Mr.S.Ravikumar, Advocate, Sr.No.41591
+1CC to Mr.J.Chandran, Advocate, Sr.No.42334

C.M.A.No.1854 of 2020

AD (CO)
K.RK. (23.11.2021)