IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2820 of 2019

C.Sekar .. Appellant/Petitioner

Vs.

1.J.C.James .

2.The New India Assurance Co. Ltd.,
Motor Third Party Claims Office,
No.45, Moore Street,
5th Floor,
Chennai-600 001. .. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 25.10.2018 passed in M.C.O.P.No.2994 of 2013 on the file of the learned V Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mrs.P.T.Saleem Fathima
For Respondent-2 : Mr.J.Chandran

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 25.10.2018 passed by the learned V Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai in MCOP No.2994 of 2013.

2. The claimant is the appellant and the learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Tribunal is inadequate and not in commensuration with the gravity of the grievous injuries sustained by the claimant on account of the accident.

3. The accident occurred on 21.04.2011 at about 20.00 Hours at Kamarajar Salai near All India Radio Bus Stop, Chennai. The Anna Square Traffic Investigation Police registered a case in FIR No.280/T1/2013. The claimant was a pedestrian and on account of the accident, he sustained fracture humarus rightt distal 3rd with fracture dislocation on elbow, head injuries and multiple injuries all over the body. He was admitted in the

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Government General Hospital and the learned counsel for the appellant reiterated that he is unable to do any hard work. The claimant was working as an Auto Driver and was earning a monthly income of Rs.9,000/-.

4. The Tribunal adjudicated the issues and the factum regarding the accident was established and the liability of the Insurance Company was also fixed. While deciding the compensation, the Tribunal has taken the disability as 10% in spite of the fact that the Doctor assessed partial permanent disability as 50%. The Doctor, who examined the claimant, given a Certificate, by stating that 50% partial permanent disability. The Tribunal has not accepted the disability certificate submitted by the Doctor (PW-2) on the ground that in support of the assessment, the Doctor has not produced the Medical Test Reports. In the absence of any sufficient medical evidence, the Tribunal disbelieved the disability certificate issued by the Doctor (PW-2) and fixed the partial permanent disability as 10%.

5. The appellant-claimant is present before this Court and on seeing the right hand, it is visible that the appellant-claimant cannot move his hands freely and he cannot utilise the hands for the purpose of lifting any hard thing. On seeing the right hand of the appellant-claimant, this Court is of the considered opinion that the compensation awarded by the Tribunal is certainly inadequate.

6. The claimant, being an Auto Driver, cannot use his right hand, which resulted that he cannot do his driving job at all. Under these circumstances, in such cases, the Tribunal ought to have fixed a reasonable compensation by applying the multiplier in view of the fact that the accident caused disability, resulted non-performance of the job in future. Under these circumstances, this Court is inclined to enhance the compensation for the appellant-claimant, the details of which are given below:-

	Rs.
Loss of Earning (Rs.7,500/-x12x7x50%)	3,15,000/-
Towards Transportation	10,000/-
Towards Attender Charges	10,000/-
Towards Loss of Amenities	10,000/-
Medical Expenses	8,490/-
Extra Nourishment	10,000/-
Pain and Sufferings	20,000/-
	3,83,490/-

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Thus, the total compensation payable to the appellant-claimant comes to Rs.3,83,490/-.

7. The second respondent/Insurance Company is directed to deposit the entire Award amount along with accrued interest at the rate of 7.5% per annum, if not already deposited, 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 Award amount along with accrued interest, by filing an appropriate application and the payments are to be made only through RTGS. The appellant-claimant is liable to pay the additional Court Fee, if any.

8. Accordingly, the judgment and decree dated 25.10.2018 passed by the learned V Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai in MCOP No.2994 of 2013 is set aside and consequently, C.M.A.No.2820 of 2019 stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The V Judge,
Small Causes Court-cum-
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.Sameem Fathima, Advocate, S.R.No.22891
+1cc to Mr.J.Chandran, Advocate, S.R.No. 23298

CMA No.2820 of 2019

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