

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.12.2020
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2496 of 2014

Ganesan

.. Appellant/Petitioner

Vs.

1.J. Sridharan

2.The Divisional Manager,

United India Insurance Co. Ltd.,

13 - A, Nethaji Road, Cuddalore. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2013, made in M.C.O.P. No.858 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Puducherry.

For Appellant : Mr.V. Udayakumar

For Respondents: Mrs.R. Sreevidhya (For R2)

R1 : No Appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 24.10.2013, made in M.C.O.P. No.858 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Puducherry.

2.The appellant-claimant filed M.C.O.P. No.858 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Puducherry, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.02.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Bus belonging to the 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.60,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 24.10.2013, made in M.C.O.P. No.858 of 2009, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained various fractures and multiple injuries fracture on his right hand and laceration, abrasions and contusion all over the body and has taken treatment in Government General Hospital, Pondicherry. The appellant, as P.W.1, deposed about the nature of injuries sustained in the accident. He also examined P.W.2 Doctor who examined the appellant and certified that the appellant suffered 64% disability. The Tribunal erroneously reduced the percentage of disability to 15% and granted meagre sum of Rs.30,000/- towards disability at the rate of Rs.2,000/- per percentage. The amounts awarded by the Tribunal towards pain and suffering, loss of income, extra nourishment and transportation are meagre. The Tribunal failed to award any amount towards future medical expenses and personal discomfort and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, considering the fact that the two disabilities referred by the Doctor in the clinic finding of the appellant is one and the same, rightly fixed the percentage of disability to 15%. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that in the accident, the appellant suffered multiple injuries, fracture on his right hand and laceration, abrasions and contusion all over the body. P.W.2 Doctor assessed that the appellant suffered 64% disability. The Tribunal reduced the percentage of disability to 15% on the ground that two disabilities referred by the Doctor in the report is one and the same. The said reasoning given by the Tribunal for reducing the percentage of disability is not correct. The 2nd respondent-Insurance Company also failed to let in any contra evidence to disprove the evidence of P.W.2 Doctor and Ex.P9-disability certificate issued by P.W.2 Doctor. Considering the nature of injuries suffered by the appellant, evidence of P.W.2 Doctor and the disability certificate issued by him, the appellant is entitled to compensation for 64% disability. The accident is of the year 2009. The Tribunal granted only a sum of Rs.2,000/- per percentage for 15% disability. The appellant is entitled to a sum of Rs.1,92,000/-

[Rs.3,000/- x 64%] towards disability at the rate of Rs.3,000/- per percentage for 64% disability. The amount awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	30,000/-	1,92,000/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Loss of income	10,000/-	10,000/-	Confirmed
5.	Pain and sufferings	10,000/-	10,000/-	Confirmed
	Total	60,000/-	2,22,000/-	Enhanced by Rs.1,62,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.60,000/- is enhanced to Rs.2,22,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.858 of 2009. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Puducherry.

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

C.M.A.No.2496 of 2014

VBA (CO)
SP (20/01/2021)



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