



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.1788 OF 2020

K.Karthikeyan,
S/o. K.Kalaiselvan,
No.41, Shanthiniketha Colony,
2nd Street, Madambakkam,
Selaiyur, Chennai-600 073. ... Appellant/Petitioner

Vs.

1. Chithra,
No.185/6, Big Street,
Thimmavaram,
Chengelpet District - 603 101.

2. National Insurance Co. Ltd.,
Motor Third Party Claims,
No.751, 3rd Floor, Anna Salai,
Chennai-600 002.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree dated 07.12.2019 in M.C.O.P. No.11 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Sub-Court No.2, Motor Accident Claims Petitions), Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1 - no appearance
Mrs.R.Rathana Thara
for R2

J U D G M E N T

The claimant is the appellant, filed this Civil Miscellaneous Appeal seeking for enhancement of compensation.



2. The case of the claimant is that on 27.09.2015 at about 04.00 p.m., while the claimant was riding his motorcycle on the extreme left side of the Nellikuppam-Guduvancherry Road, another motorcycle bearing Regn. No.TN-19-II-0122, owned by the 1st respondent, which was insured with the 2nd respondent, came in rash and negligent manner and dashed against the claimant, in which the claimant has suffered a fracture in both hands. Hence, claiming compensation of Rs.15 lakhs, the claim petition has been filed by the appellant/claimant.

3. The 1st respondent/owner of the vehicle remained exparte. The 2nd respondent Insurance Company contested the claim petition on the ground that, the accident has been taken place due to the negligence of the claimant and the insurance company is not liable to pay the compensation. It is also stated that the injuries suffered by the claimant are very simple in nature and the amount of compensation claimed by the claimant is highly excessive.

4. In the very same accident, another claim petition has been filed in M.C.O.P. No. 12 of 2016 and a joint trial was conducted in both M.C.O.P.s, in which, before the Tribunal, the claimants have examined themselves as P.W.1 and P.W.2 respectively and marked as many as 15 documents as Ex.P1 to P15. On the side of respondent, an authorised representative of the insurance company was examined as R.W.1 and marked as many as 7 documents as Ex.R1 to R7. The disability certificate issued by the medical board was marked as Ex.C1.

5. The Tribunal, after considering the materials available on record, has held that the accident was taken place due to the rash and negligent driving of the driver of the offending vehicle. Considering the fact that, at the time of accident, the driver of the offending vehicle did not possess the driving license and hence, the Tribunal has ordered pay and recovery. So far as quantum of compensation is concerned, considering the disability certificate issued by the medical board as nil disability, the Tribunal, towards pain and sufferings, has awarded a sum of Rs. 50,000/- and towards medical expenses, a sum of Rs.6,910/-. Thus, totally, the Tribunal has awarded a sum of Rs.56,910/- as compensation. Not being satisfied with the same, the claimant has filed this Civil Miscellaneous Appeal before this Court.

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



7. The accident was taken place in the year 2015, in which, the claimant has sustained the following injury :-

“undisplaced fracture of radius and ulnar styloid”

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He has also undergone conservative treatment and no hospitalisation was involved. He has taken treatment as inpatient for two days. The Medical Board has assessed the disability at 0%. In the said circumstances, the Tribunal has granted a sum of Rs.50,000/- towards pain and sufferings. However, considering the fact that the claimant has suffered a fracture in both hands, he was also hospitalised and spent more amount towards medical expenses. Considering the above circumstances, this Court is inclined to grant a sum of Rs.70,000/- towards pain and suffering and loss of income. Apart from that, a sum of Rs.7,000/- is granted towards medical expenses instead of Rs.6,910/-. Thus, the appellant is entitled to get a sum of Rs.77,000/- (Rupees seventy seven thousand only) as compensation instead of Rs.56,910/- as awarded by the Tribunal.

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.56,910/- is hereby enhanced to Rs.77,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are 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, 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 the 2nd respondent insurance company is permitted to recover the same from the 1st respondent/owner of vehicle 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(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mrs.R.Rathana Thara, Advocate, S.R.No.42962

+1cc to M/s.M.Malar, Advocate, S.R.No.42411

C.M.A.No.1788 of 2020

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CS/17/09/2021