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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.A. No.1139 of 2017

E.Raghu

...Appellant

Vs

1. I.Arun Christopher

2. The Oriental Insurance Co. Ltd.,
No.8, Esplanade,
U.L.I. Buildings, 3rd Floor,
Chennai - 108.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Motor Accidents Claims Tribunal {V Judge, Court of Small Causes} at Chennai at M.C.O.P. No.5311 of 2000 dated 09.06.2004.

For Appellant : Mr. A.N.Viswanatha Rao

For Respondent 1 : Ex-parte
2 : Mr. R.Sivakumar

JUDGMENT

This appeal is preferred by the claimant against the judgment and decree passed by the Motor Accidents Claims Tribunal {V Judge, Court of Small Causes} at Chennai in M.C.O.P. No.5311 of 2000 dated 09.06.2004.

2. Learned counsel for the appellant states that the appellant was working as a Mason and suffered multiple injury in his right hand when he travelled in a vehicle. As against the claim for a sum of Rs.5,00,000/- on various heads, the Tribunal awarded a sum of Rs.1,44,325/- as compensation for the appellant. Aggrieved by the same, the above appeal has been preferred by the appellant.

3. Learned counsel for the appellant furnished the photograph of the appellant and pointed out that the functional disability of the appellant is more than the disability accepted



by the lower Court.

4. Learned counsel for the second respondent insurance company submitted that the appellant has never proved his profession that he was working as mason. He further submitted that the appellant has not examined any other witness to show that he was earning by doing mason work and that the appellant has filed the appeal with a long delay and therefore, this Court should take into consideration the delay and pass appropriate orders.

5. It is seen that the Tribunal has accepted the contents in discharge summary and its claim based on the medical bills. The Tribunal has taken into consideration the X-ray and the disability certificate issued by the competent Doctor. Based on the evidence, the Tribunal has arrived at a specific finding that the appellant suffered permanent disability. However, the Tribunal did not consider the fact that the appellant was working as a mason and that the permanent disability of appellant should be more than something which is seen from the disability certificate. It should be noted that in cases of this nature, the functional disability of the injured should be considered and should be given preference rather than the disability as found or certified by the competent authority. It is difficult to accept the argument that a mason could manage to do everything as before, with such disability in his right hand. It is impossible for the appellant to be engaged as a Mason with such disability. At least, this Court is convinced that the appellant cannot be engaged as a full time mason even if he is forced to do the same work. The Tribunal accepted the appellant's statement that he is a mason by profession. Even in the counter affidavit, there is no specific denial about the appellant's occupation. Therefore, it is not necessary for the appellant to let in any further evidence to prove his occupation.

6. Considering the overall circumstances, this Court is inclined to enhance the amount granted in M.C.O.P. No.5311 of 2000 by the Motor Accidents Claims Tribunal {V Judge, Court of Small Causes}, Chennai, from Rs.1,44,325/- to Rs.3,00,000/- (Rupees Three Lakhs Only). The Tribunal has awarded interest at the rate of 9% and therefore, the appellant is entitled to get the enhanced compensation with interest at the rate of 7.5% per annum. Since the appeal was filed with a delay, this Court is of the view that the appellant / claimant is not entitled to get interest for the period of 1550 days (i.e. the period of delay). The respondents are directed to deposit the enhanced compensation of Rs.3,00,000/- deducting the amount already deposited, if any, with interest at the rate of 7.5% per annum.



7. The Civil Miscellaneous Appeal is allowed and the award of Tribunal in M.C.O.P. No.5311 of 2000 is modified to the extent indicated above. No costs.

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Sd/-
Assistant Registrar
dt : 18.03.2021

//True Copy//

Sub Assistant Registrar

bkn

To

The V Judge,
Court of Small Causes
The Motor Accidents Claims Tribunal
Chennai.

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.33625
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.33436

C.M.A. No.1139 of 2017

SVI (CO)
RGA (10/08/2021)