

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.142 of 2017
and
C.M.P.No.1172 of 2017

Selvam

.. Appellant/Petitioner

Vs.

1.Iyyappan

2.Rajeswaran

3.The United India Insurance Company Limited,
123-A, No.2nd Road,
Mayiladuthurai.

4.The New India Assurance Company Limited,
No.149, Bharathiyaar Road,
Karaikal.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.03.2013 made in M.A.C.T.O.P.No.87 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.N.U.Prasanna
for M/s.Sai Bharath and Ilan

For R3 : Mr.A.Dhiraviyanandhan

For R4 : Ms.G.Sukumari
for Mr.R.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.03.2013 made in M.C.O.P.No.87 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal.

2.The appellant is the claimant in M.C.O.P.No.87 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Karaikal. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.08.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.45,000/- as compensation to the appellant/claimant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the compensation awarded by the Tribunal for the multiple injuries sustained by the appellant is very meagre. The appellant sustained multiple fractures for facial bone with right frontal fracture, head injury and right eye completely ruptured, skull opened due to which, blood clot in the brain. The appellant has taken treatment in the Vinodhagan Memorial Hospital Private Limited, Tanjore from 28.08.2009 to 19.09.2009 and the Tribunal has not awarded any amount towards attendant charges. The appellant spent a sum of Rs.3,00,000/- towards medical expenses and the Tribunal has not awarded any amount towards medical expenses. The appellant lost his right eye and also sustained head injury i.e., skull opened, underwent brain surgery and having frequent unconsciousness and he was visually impaired and he suffered 30% permanent disability. The Tribunal has not awarded any amount towards disability. The Tribunal has not awarded any amount towards future medical expenses as the appellant is still taking treatment. The appellant was aged 32 years at the time of accident and was working as a driver and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by him in the accident, he lost his right eye and he is not in a position to continue his driver work. Therefore, the compensation awarded by the Tribunal towards loss of income is very meagre. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of income. In any event, the quantum of compensation awarded by the Tribunal is very meagre and prayed for enhancement of compensation.

6.Mr.A.Dhiraviyanandhan, learned counsel appearing for the 3rd respondent-Insurance Company contended that the appellant has not produced any medical bills to prove his contention that he spent a sum of Rs.3,00,000/- towards medical expenses. The appellant has not produced any medical bills before the Tribunal

and he has not assigned any reason for non production of the same before the Tribunal. Hence, the production of medical bills before this Court cannot be entertained. When a document is in possession, the appellant should adduce proper reason for non production of the same at the time of trial. Absolutely, no valid reason was given by the appellant for non-production of the documents. The appellant has not produced any material evidence with regard to his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.7,500/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant has not produced any medical records to show that he requires compensation towards future medical expenses. In the absence of any medical records, the appellant is not entitled to any amount towards future medical expenses. The total compensation awarded by the Tribunal is not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Ms.G.Sukumari, learned counsel appearing for the 4th respondent-Insurance Company contended that the injuries sustained by the appellant are only simple in nature. In such circumstances, a sum of Rs.45,000/- awarded by the Tribunal as compensation for the simple injuries sustained by the appellant is excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

9.From the materials available on record, it is seen that the accident has occurred on 27.08.2009 and the appellant suffered multiple fractures of facial bone with right frontal fracture, head injury and right eye completely ruptured, skull opened due to which, blood clot in the brain. The appellant had taken treatment for the injuries sustained by him in Government Hospital, Nagapattinam and thereafter as in-patient in Vinodhagan Memorial Hospital, Thanjavur from 28.08.2009 to 19.09.2009 and a surgery was conducted to him on 28.08.2009. The appellant has not produced any documents with regard to his disability and the medical expenses incurred by him and he has produced only the discharge summaries and Accident Register before the Tribunal. The Tribunal considering Ex.P3/discharge summary issued by Vinodhagan Memorial Hospital, Thanjavur and Ex.P10/xerox copy of Accident Register, awarded a sum of Rs.45,000/- as compensation to the appellant. The appellant has produced the medical bills and the disability certificate dated

24.07.2013 issued by the General Hospital, Karaikal and District Disabled Rehabilitation Centrel, Karaikal in the typed set of papers filed in the present appeal to the effect that he suffered 30% disability. The appellant has not produced any of these documents before the Tribunal at the time of trial and not let in any evidence with regard to disability.

10.Considering the entire materials on record, the documents filed herein in the appeal and the Motor Vehicles Act, 1988, being a beneficial legislation, it will be in the interest of justice, if the appellant is given an opportunity to prove the disability suffered by him and the medical expenses incurred by him.

11.For the above reason, this Civil Miscellaneous Appeal is disposed of and the M.C.O.P.No.87 of 2011 is remanded to the Motor Accident Claims Tribunal, District Court, Karaikal, to decide the enhancement of compensation by permitting the appellant to prove the disability suffered by him and the expenses incurred by him for taking treatment. The Tribunal is directed to refer the appellant to the Medical Board and to decide the issue. The M.C.O.P is of the year 2011 and hence, the District Judge, Motor Accident Claims Tribunal, Karaikal, is directed to dispose of the claim petition within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge,
Motor Accident Claims Tribunal, Karaikal.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.3453

+1cc to Mr.A.Dhiraviyanandhan, Advocate, S.R.No.3379

+1cc to M/s.Sai Bharath and Ilan, Advocate, S.R.No.3414

C.M.A.No.142 of 2017

PP(CO)

CS/09/09/2020