

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2829 of 2017

Govindharaj

.. Appellant/Petitioner

Vs.

1.Bijuphilip

2.M/s.New India Assurance Company Ltd.,
Sri Vari Shopping Mall, 2nd Floor,
No.2/91, New Bus Stand Road,
Meyyanur, Salem - 636 004. ... Respondents/ Respondents

(The 1st respondent remained set ex-parte before the Tribunal,
Hence notice may be dispensed with this appeal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.11.2015 made in M.C.O.P.No.603 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.Ma.Pa.Thangavel

For R2 : Ms.S.R.Sumathy

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 23.11.2015 made in M.C.O.P.No.603 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant is claimant in M.C.O.P.No.603 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. He filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.01.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver cum owner of the Tata Indigo Car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tata Indigo Car to pay a sum of Rs.65,200/- as compensation to the appellant.

4.Not being satisfied with the quantum of compensation 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/claimant contended that the appellant has sustained compound fractures in his left hand fingers, left leg foot and left leg toe, due to which there was pain, swelling, stiffening and he could not able to sit and walk. Due to the fractures sustained in the accident, he could not use his left leg for doing tailoring work. P.W.2/Doctor has assessed the disability of the appellant as 20%. The appellant took treatment as in-patient for one week in Vinayaka Mission Hospital, Salem. The appellant has produced Ex.P3/wound certificate, Ex.P6/discharge summary and Ex.P10/disability certificate issued by the above said hospital. The Tribunal without considering the same, has held that the injuries suffered by the appellant are simple injuries and awarded only a sum of Rs.15,000/- towards pecuniary & non-pecuniary damages. The Tribunal has not awarded any compensation towards attendant charges and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that as per Ex.R1/copy of wound certificate, the appellant has sustained only simple injuries and no bone injuries. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8.It is the contention of the appellant that in the accident, he sustained fracture in 5th metacarpal base left hand, left leg foot and left leg toe, due to which there was pain, swelling, stiffening and he could not able to sit and not able to walk. P.W.2/Doctor has assessed the disability of the appellant as 20%. On the other hand, the 2nd respondent has

marked Ex.R1/wound certificate which shows that the appellant suffered only simple injuries and no bone injuries. In view of the same, the Tribunal has granted a lump sum compensation of Rs.15,000/-. The said reason given by the Tribunal is not correct. The 2nd respondent has not let in any evidence to disprove the percentage of disability assessed by the Doctor. Therefore, the appellant is entitled to compensation for 20% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.60,000/- (Rs.3,000/- X 20%) is awarded towards disability. The Tribunal has awarded a lump sum compensation of Rs.15,000/- altogether towards pain & sufferings, extra nourishment and transportation which is meagre. Considering the age and nature of injuries sustained by the appellant, a sum of Rs.10,000/- each is granted towards pain & sufferings, extra nourishment and transportation. The appellant has taken treatment as in-patient for one week in Vinayaka Mission Hospital, Salem. The Tribunal has not awarded any compensation towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is granted towards attendant charges. The amount awarded by the Tribunal towards medical bill is just and reasonable and hence the same is 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 or reduced
1.	Disability	-	60,000	Granted
2.	Pain & sufferings, extra nourishment and transportation	15,000	10,000 10,000	Enhanced
3.	Medical bills	50,154	50,154	Confirmed
4.	Attendant charges	-	10,000	Granted
	Total	Rs.65,154/- is rounded off to Rs.65,200/-	Rs.1,50,154/- is rounded off to Rs.1,50,200/-	Enhanced by Rs.85,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,200/- is hereby enhanced to Rs.1,50,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is 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 and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant 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-VI)

//True copy//

Sub Assistant Registrar

mtl

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1cc to Mr. Ma. Pa. Thangavel, Advocate SR.No. 6904

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KK (CO)
GMY (25/09/2020)

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