IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2880 of 2015

Sivakumar ...Appellant/Petitioner

Vs

1.R.Mohan Ganesh
(Since R1 remained exparte before the Tribunal his presence may be dispensed with).

2.HDFC ERGO General Insurance Co. Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet, Chennai – 600 018.
...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 16.07.2015 and made in MACTOP.No.2847 of 2010 on the file of the Motor Accident Claims Tribunal and Special Sub Court No.II to deal with MCOP cases, Chennai.

For Appellant : Ms.A.Subadra
for Ms.M.Malar
For Respondent 2 : Mr.J.Michael Visuvasam

R1 - Exparte

JUDGMENT

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 16.07.2015 passed by the Motor Accident Claims Tribunal (Special Sub Ordinate Court-II, Chennai) in MCOP.No.2847 of 2010.

2. Heard Ms.A.Subadra, learned counsel representing Ms.M.Malar, learned counsel for the Appellant and Mr.J.Michael Visuvasam, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal seeking enhancement of compensation. The details of the compensation awarded by the Tribunal to the Appellant/claimant are as follows:

Heads	Award Amount (Rs.)
For 30% partial and permanent disability at the rate of Rs.3,000/- per percent	90,000/-
Pain and Suffering	50,000/-
Transportation charges	6.000/-
Extra nourishment	3,000/-
Cost of Attender	2,000/-
Loss of income for 3 months	20,000/-
Loss of future prospects	50,000/-
Loss of Amenities	50,000/-
Medical Expenditure	4,000/-
Total	2,75,000/-

4. According to the Appellant, as seen from the claim petition, he sustained head injury, fracture in his right shoulder, dislocation of his left wrist, dislocation in his left knee, cut injury in left side hip and injuries all over the body. He has also pleaded in his claim petition that he took first aid treatment in the Government Hospital Villupuram from 22.12.2009 to 24.12.2009 and also took treatment at Puthur bone setting hospital and that, he has been taking treatment till the date of the claim petition. He has also pleaded that due to the injury sustained by him, he has been unable to do his normal work as before. The Appellant/claimant claims that he was an agricultural coolie and aged 32 years at the time of the accident and was earning Rs.500 per day. In the claim petition, he has sought for a compensation of Rs.6,00,000/- from the respondents. The second respondent insurance company has also filed a counter before the Tribunal wherein they have disputed the contention of the Appellant/claimant. They have disputed the age, occupation and income of the Appellant/claimant. They have also disputed the nature of injuries alleged to have been sustained by the Appellant/claimant and the period of hospitalisation. They have also pleaded that the compensation claimed by the Appellant/claimant is inflated and excessive.

5. Before the Tribunal, the Appellant/claimant filed five documents which were marked as Ex.P1 to Ex.P5 namely Ex.P1- Attested xerox copy of FIR, Ex.P2 - O.P. chit issued by the Government Hospital, Villupuram, Ex.P3 - Prescriptions with a receipt, Ex.P4 - Disability certificate, Ex.P5 - X-Ray and two witnesses were examined namely the Appellant/claimant himself as PW1 and the Doctor who is alleged to have been examined the Appellant as PW2. On the side of the respondent Insurance company neither any document was filed nor any witness examined, before the Tribunal.

6. As seen from the evidence placed on record by the Appellant/claimant, it is not in dispute that the Appellant/claimant was hospitalised only for a period of two days from 22.12.2009 to 24.12.2009. As seen from the O.P.chit issued by the Government Hospital, Villupuram, which was marked as Ex.P2 before the Tribunal, the Appellant/claimant did not undergo any surgery as a result of the injuries sustained by him. The genuineness of the O.P.chit issued by the Government Hospital, Villupuram which has been marked as Ex.P2 has been disputed by the second respondent insurance company before the Tribunal, as seen from the cross examination of PW1 by the insurance company.

7. This court has also perused and examined the O.P.chit and finds that it is a small piece of paper where the details of the alleged injuries sustained by the Appellant/claimant has been handwritten. There is also no signature found in the O.P.chit. No date is also mentioned in the O.P.chit, though the date of admission and the date of discharge of the patient has been mentioned. The signature of the medical officer who has issued the O.P.chit is also not found and the name of the Doctor who issued the O.P.chit is also not mentioned. Under the normal circumstances, a patient who has been admitted in the hospital and discharged thereafter, there would have been a discharge summary issued by the hospital. In the case on hand, admittedly, no discharge summary has been filed by the Appellant/claimant before the Tribunal. The person who has issued the O.P.chit which has been marked as Ex.P2 has not been examined as a witness before the Tribunal. The piece of paper which has the seal of Government Hospital, Villupuram which the Appellant/claimant has produced claiming the same to be a O.P.chit issued by the Hospital is unbelievable to this Court.

8. The Doctor who assessed the disability of the Appellant/claimant in his disability certificate issued to the Appellant/claimant which has been marked as Ex.P4 before the Tribunal, it is observed as follows:

(a) 25% disability for headache, giddiness, tremors on left hand and leg, memory deficit and cannot carry head loads,

(b) 20% for the malunited fracture of right scapula fibrosis muscles, abduction 80 degree, IRER 50 degree limited and difficulty to work and carry weight with right hand.

(c) 50% for the left wrist fibrosis, DEPF 50 degree limited and difficulty to carry weight,

(d) 25% for left knee fibrosis avulsion ACL treated, that flexion 80 degree and

(e) Totally the Doctor has assessed the disability of the Appellant/claimant at 75% partial and permanent disability.

9. The Tribunal under the impugned award has taken note of the fact that the Appellant/claimant has been treated only conservatively and also has taken note of the fact that the Appellant/claimant has not produced the discharge summary or wound certificate to prove his further treatment and only thereafter has fixed the disability at 30%. The Tribunal has also taken note of the fact that the Appellant/claimant has produced only a set of prescriptions along with a certificate issued by a Siddha Doctor in respect of his further treatment. The Tribunal has also taken note of the fact that even as per the Appellant/claimant's own statement, he has suffered fracture of scapula bone and dislocation of left wrist and all other injuries sustained by him are only in the nature of simple injuries. This Court is of the considered view that since the Appellant/claimant has taken only conservative treatment and has also not produced the discharge summary issued by the Hospital and has also not undergone any surgery and hence, the disability fixed by the Tribunal at 30% is a correct assessment.

10. The Appellant/claimant has sought for enhancement of compensation on the following grounds namely (a) Despite the Doctor having assessed the disability of the Appellant/claimant at 75%, the Tribunal has erroneously reduced the disability to 30%, (b) the disability compensation awarded by the Tribunal is too low and (c) The compensation awarded by the Tribunal under the heads of transportation, extra nourishment, attender charges and medical expenses is low.

11. The Tribunal has awarded disability compensation of Rs.90,000/- calculated at Rs.3,000/- per percentage of disability for 30% disability. The accident happened in the year 2009. Since the disability assessed by the Tribunal is a correct assessment as observed earlier, the disability compensation awarded by the Tribunal at Rs.90,000/- calculated at Rs.3,000/- per percentage of disability is also a correct assessment. With regard to the compensation awarded by the Tribunal towards pain and suffering at Rs.50,000/-, Transportation charges at Rs.6,000/-, Extra nourishment at Rs.3,000/-, cost of attender at Rs.2,000/-, Loss of income for 3 months at Rs.20,000/-, Loss of future prospects at Rs.50,000/-, Loss of amenities at

Rs.50,000/- and medical expenditure at Rs.4,000/- though may be on the higher side, this Court is not inclined to interfere with the same in view of the fact that no appeal has been filed by the second respondent insurance company challenging the quantum of compensation fixed by the Tribunal. For example, the Tribunal has awarded a sum of Rs.50,000/- as compensation towards loss of future prospects, though admittedly the Appellant/claimant has not underwent any surgery and was admitted in the hospital only for a period of two days.

12. For the foregoing reasons, there is no merit in this appeal. Accordingly, this civil miscellaneous appeal is dismissed. No costs. The second respondent Insurance company is directed to deposit the compensation awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.2847 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.2847 of 2010 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Sub Court No.II to deal with MCOP cases, Chennai

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

+1cc to M/S.M.Malar, Advocate, S.R.No.30555
+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.30521

C.M.A.No.2880 of 2015

AK-II(CO)
SU(26/07/2021)