



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2021

CORAM:

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1337 of 2020

E.Jamal @ Jamam

...Appellant/Petitioner

Vs

1.M.Manavalan

2.National Insurance Company Ltd.,
DO No.110, JN Street,
Puducherry-605 001.

...Respondents/Respondents

(R1 exparte in Lower Court)

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 24.03.2020 made in M.C.O.P.No.99 of 2016, on the file of Motor Accident Claims Tribunal, Principal Sub Judge, Cuddalore.

For Appellant : Mrs.Ramya V.Rao

For R2 : Mr.G.Anandan

JUDGMENT

(The Case has been heard through Video Conference)

This Civil Miscellaneous Appeal has been filed against the award dated 24.03.2020 made in M.C.O.P.No.99 of 2016, on the file of Motor Accident Claims Tribunal, Principal Sub Judge, Cuddalore.

2.The appellant is the claimant in M.C.O.P.No.99 of 2016, on the file of Motor Accident Claims Tribunal, Principal Sub Judge, Cuddalore. He filed the above claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.08.2015.

3.According to the appellant, that on 26.08.2015 at about 05.40 hours, when he was riding TVS Victor motorcycle bearing Registration No.PY-01-AH-7113 from south to north at a moderate speed, keeping extreme left of Maruthadu Road, opposite to Co-operative Bank, at the time, the 1st respondents Tractor bearing Registration No.TN-32-M-2072 came from the opposite direction,



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at a great speed, in a rash and negligent manner, without making horn and dashed against the motorcycle, in which, the claimant was thrown out and sustained grievous injuries. Therefore, the appellant has filed the above claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him against the respondents 1 and 2 being the owner and insurer of the Tractor respectively.

4.The 1st respondent/owner of the Tractor remained ex-parte before the Tribunal.

5.The second respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that as per investigation report and final report, the claimant drove his vehicle in a rash and negligent manner and without minding ditch on the road and suddenly turned the vehicle right side on the road and lost his control and dashed against the first respondent vehicle and caused the accident. Since, the police has closed the case as "Mistake of Fact", the appellant alone contributed the accident. The appellant/claimant has to prove his age, avocation, income, nature of injuries, disability and period of treatment by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Ex.P1 to Ex.P9 were marked. On the side of the 2nd respondent/Insurance Company, R.W.1 was examined and Ex.R1 was marked.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the Tractor belonging to the first respondent and directed the second respondent-Insurance Company, being insurer of the Tractor to pay a sum of Rs.2,37,633/- as compensation to the appellant/claimant.

8.Not being satisfied with the amounts awarded by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

9.The learned counsel appearing for the appellant would contend that the Tribunal has not appreciated the material evidence placed on record with regard to the injuries sustained by the appellant/claimant since the medical board assessed the disability at 22% and it is permanent physical disability, as such the Tribunal ought to have seen that the injured sustained functional disability and ought to have fixed the disability at 50%. He would also contend that the Tribunal has not fixed the



notional income of the claimant since at the time of accident, the appellant was working as a Hotel Master and earning a sum of Rs.15,000/- per month, but the Tribunal has erroneously fixed the notional income at Rs.6,500/- which is very meagre.

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10. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company would contend that the Tribunal has rightly dealt with the matter and sufficient and just compensation has been awarded by considering the material evidence on record which requires no interference.

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

12. A perusal of the award of the Tribunal, it appears that taking note of the fact that the claimant has not produced any income proof to prove that he was working as a Hotel Master, by relying upon a decision of this Court in Pavalakodi and Others Vs. TNSTC, Villupuram Limited and Another as reported in 2015 (2) TNMAC 159 which was rendered by following the decision of the Hon'ble Apex Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TNMAC 459, the Tribunal has rightly fixed Rs.6,500/- as notional income of the claimant. As regards the functional disability claimed by the appellant, the Tribunal by relied on Ex.C1/disability certificate issued by the Medical Board and came to the conclusion that the claimant only suffered the injury of amputation of right great toe and thereby rightly fixed the disability of earning capacity at 12%. Further, taking note of the fact that the appellant/claimant has not produced any records towards expenditure incurred by him towards loss of amenities, extra nourishment, attender charges and transportation, the Tribunal awarded compensation under the said heads. Therefore, on perusal of the entire award, this Court does not find any infirmity in order to interfere with the same. The Tribunal has rightly awarded just compensation which in the opinion of this Court, does not require to enhance the same and the same is confirmed by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,37,633/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is hereby confirmed. The second respondent/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.99 of 2016 before the Court below, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent is permitted



to withdraw the award amount along with interest and costs, less the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

gbi

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Cuddalore.

+1cc to Mr.G.Anandan, Advocate, S.R.No.33465

C.M.A.No.1337 of 2020

GPL(CO)
GN(20/10/2021)