



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1992 of 2020

Dhamodharan

...Appellant / Petitioner

Vs

1.Martin Joseph

2.United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building, 4th Floor,
No.134, Greems Road,
Chennai 600 006.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2020, made in M.C.O.P. No.3297 of 2016, on the file of the II Special Sub Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.D.Bhaskaran (For R2)

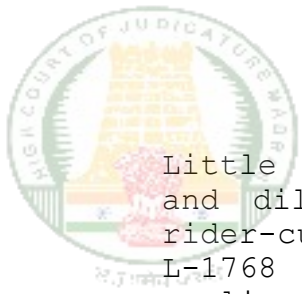
J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 02.01.2020, made in M.C.O.P. No.3297 of 2016, on the file of the II Special Sub Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant filed M.C.O.P. No.3297 of 2016, on the file of the II Special Sub Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.04.2016.

3.According to the appellant, on the date of accident, at 07.45 hrs, when the appellant was walking along Anna Salai at



Little Mount Aruna Timber Mart Pedestrian Cross with due care and diligence from South to North direction, 1st respondent, rider-cum-owner of the Motorcycle bearing Registration No.TN-12-L-1768 rode the same from West to East direction in a rash and negligent manner and dashed against the appellant and caused the accident. The accident occurred due to rash and negligent riding of Motorcycle by the 1st respondent. In the accident, the appellant sustained grievous injuries. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondents as rider-cum-owner and insurer of the offending vehicle.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, at the time of accident, in violation of Section 3 of the Motor Vehicles Act, the 1st respondent rode the Motorcycle in public place with only Learner's License and did not possess valid Driving License. The policy does not cover loss or damage, if any person including the insured is not holding effective and valid driving license at the time of accident. Hence, the 2nd respondent is not liable to indemnify the 1st respondent, for violation of policy conditions. In any event, the appellant has to prove the nature of injuries, treatment taken, disability suffered, his age, avocation and income, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1, examined Doctor as P.W.2 and marked 8 documents as Exs.P1 to P8. The 2nd respondent examined their Official as R.W.1 and marked 3 documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent, as insurer of the said vehicle to pay a sum of Rs.50,500/- as compensation to the appellant.

8.Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.01.2020, made in M.C.O.P. No.3297 of 2016, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that while the appellant was walking on the left side of the road, the 1st respondent rode his Motorcycle in a rash and negligent manner and dashed on the appellant and caused the



accident. In the accident, the appellant sustained injuries and fracture. The learned counsel appearing for the appellant contended that the appellant suffered fracture of left scapula. P.W.2 Doctor examined the appellant and assessed that the appellant suffered 15% disability. The Tribunal without assigning any reason, disbelieved Ex.P7 - disability certificate and awarded only meagre amount of Rs.50,500/- as compensation. The appellant was aged 66 years, working as Security and was earning a sum of Rs.15,000/- per month, at the time of accident. Due to the injuries sustained in the accident, he could not do his regular work. The Tribunal ought to have awarded compensation under the heads pain and suffering, loss of income, loss of amenities, transportation and attendant charges. The Tribunal ought to have awarded compensation as claimed by the appellant and prayed for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that in the absence of any material evidence to substantiate the assessment of P.W.2 Doctor, the Tribunal rightly rejected the evidence of P.W.2 Doctor. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

12.From the materials on record, it is seen that it is the contention of the appellant that in the accident, he suffered fracture in shoulder, abrasion in the right hand and injuries in the body. The appellant has not produced any materials in support of his case, except marking Ex.P2 - O.P. Chit, which shows that the appellant suffered injuries in the head and shoulder and he has taken treatment for that on that day as out patient. There is no mention in the O.P. Chit about any fracture as claimed by the appellant in the claim petition. P.W.2 Doctor is not the Doctor who treated the appellant. P.W.2 Doctor certified that the appellant suffered 15% disability and gave evidence to that effect. The appellant has not filed any records to show the basis on which P.W.2 Doctor assessed the disability of the appellant. The Tribunal, in the absence of any medical records, did not accept the evidence of P.W.2 Doctor and held that disability assessed by P.W.2 Doctor is not for the injuries sustained in the accident and considering Exs.P2 and P3, held that appellant suffered only simple injuries and granted Rs.50,000/- for simple injuries and Rs.500/- as per Ex.P3-medical receipt. The appellant is not entitled for any enhancement of compensation and there is no error in the award of the Tribunal, warranting interference by this Court.



13. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.50,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent is directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.3297 of 2016. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gsa

To

1. The II Special Sub Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

C.M.A.No.1992 of 2020

VBA(CO)
RVM(11/08/2021)