



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.417 of 2022

Selvan @ Selvaraj

...Appellant/Claimant

vs.

1.Natarajan

2.United India Insurance Co., Ltd.,
Divisional Office, HUB, Ranga Building,
Perambur Main Road, Peramanur,
Salem-636 007.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order in M.C.O.P.No.1184 of 2016, dated 20.10.2021 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No-I, Salem.

For Appellant : Mr.C.Paraneedharan

JUDGMENT

This appeal has been filed seeking an enhancement of compensation awarded by the Motor Accident Claims Tribunal / Special Subordinate Judge No-I, Salem in M.C.O.P.No.1184 of 2016, dated 20.10.2021, the claimant is before this Court.

2. The facts in brief are as follows:

The appellant/claimant had filed M.C.O.P.No.1184 of 2016 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No-I, Salem, claiming compensation for the injuries sustained by him in a road traffic accident on 10.11.2015 involving the vehicle belonging to the 1st respondent which is insured with the 2nd respondent/Insurance Company.

3. The appellant had claimed a sum of Rs.15,00,000/- as compensation. It is his contention that on the said date of accident, he was riding a Honda Active TN-34-W-3877 proceeding on the S.P.Colony to Ayakaattur Road from west to east. While so, a Tata Ace bearing Reg.No.TN 40 W 5538 coming in the



opposite direction, driven in a rash and negligent manner collided with the appellant's vehicle, as a result of which the accident had taken place. The appellant had fallen down and had sustained injuries for which the claim petition was filed.

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4. The 2nd respondent/Insurance Company had filed a counter seeking leave to invoke the defence available to them under Section 170 of Motor Vehicles Act. The 2nd respondent had directed the claimant to show proof that the 1st respondent's vehicle was insured with them and had also questioned the manner of the accident and stated that the negligence was on the claimant as well. They had also questioned the amount of compensation claimed is being on the higher side.

5. The learned Judge of the Motor Accident Claims Tribunal by her order dated 20.10.2021, had awarded a sum of Rs.2,68,465/- as compensation together with an interest at the rate of 7.5% p.a. Aggrieved by the amount awarded, the appellant/claimant is before this Court.

6. Mr.C.Paraneedharan, learned counsel appearing on behalf of the appellant would contend that the Court below has not taken note of the subsequent disability certificate which has been marked as Ex.P12 wherein the Doctor had opined that the claimant had suffered partial permanent disability to the extent of 42.08%. He would therefore submit that since it was partial permanent disability, the award of the Tribunal should have adopted a multiplier method for arriving compensation and not a percentage basis.

7. Heard the learned counsel for the appellant.

8. The claimant has filed Ex.P3 discharge summary near to the date of accident. The accident had taken place on 10.11.2015 and Ex.P3 would indicate that he was discharged on 23.11.2015. The discharge summary clearly shows that the appellant had improved and thereafter had been discharged. Therefore, the contents of Ex.P12 appears to be tailor-made for the purpose of making a claim. In the light of the fact that in the year 2015, when the claimant was discharged after treatment, the Doctor had clearly stated as follows:

'He improved and discharged'.

Ex.P12 appears to be a created document.

Further, Ex.P12 dated 02.02.2021 is issued after the filing of this claim petition, the document cannot be looked into as it appears to be a created one.



9. The Tribunal below has considered PW2's evidence and Ex.P20 to arrive at a disability of 20%. The Insurance Company has not challenged the said award. However, taking note of the discharge summary, which is given in the year 2015 immediately after the accident and in which, it is clearly stated that the appellant/claimant had improved, the subsequent certificate which shows an assessment not reflected earlier cannot be taken into consideration. The Court below has rightly appreciated the documents and assessed the disability at 20%. Therefore, this Court does not find any reason to interfere with the Order passed by the learned Special Subordinate Judge No-I, Salem.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the Order passed by the Motor Accident Claims Tribunal / Special Subordinate Judge No-I, Salem in M.C.O.P.No.1184 of 2016, dated 20.10.2021 is confirmed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Motor Accident Claims Tribunal /
Special Subordinate Judge No-I,
Salem.

Copy to

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

C.M.A.No.417 of 2022

CP (CO)
SP (29/03/2022)