



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.464 of 2022

Sankar

... Appellant/Petitioner

vs.

1.Madesh

2.National Insurance Co., Ltd.,
by its Manager,
19/B, S.R.Complex, Rajamani Thottam,
Pavani Salai, Sankari,
Salem District.

Branch Office: Dr.Sankaran Salai, Namakkal.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.440 of 2016 dated 30.04.2021, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.C.Paraneedharan

JUDGMENT

The appellant/claimant aggrieved by the award passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal, in M.C.O.P.No.440 of 2016, dated 30.04.2021 is before this Court.

2. The facts in brief are as follows:

The appellant/claimant had met with an accident on 29.04.2016 at about 1.00 p.m., when the two wheeler bearing Reg.No.TN 45 AN 5171 in which he was driving was hit by the lorry bearing Reg.No.TN 45 X 3335 coming in the opposite direction. The accident was solely due to the fault of the driver of the lorry belonging to the 1st respondent and insured



with the 2nd respondent. After the accident, the petitioner was taken to C.M. Hospital, Namakkal and thereafter, he was shifted to Ganga Hospital, Coimbatore as inpatient. At the time of accident, the petitioner was aged 38 years and working as auto driver and earning a sum of Rs.20,000/- p.m.

3. The respondents 1 and 2 are not filed any counter.

4. The Tribunal below after considering the evidence on record arrived at a compensation of Rs.5,04,725/- to the claimant/appellant herein. Being dis-satisfied with the said award of the Tribunal the appellant has preferred the instant appeal.

5. The main grievance of the appellant is that the disability being permanent one has been assessed at percentage basis and the Tribunal has not adopted the multiplier method. That apart, the very meagre amount is awarded under the head of loss of income and towards transportation and pain and suffering. The learned counsel for the appellant / claimant would contend that the doctor who had given the treatment had assessed the claimant's disability as 40% and the same has been marked as Ex.P14. However, the Tribunal had only adopted 30% towards disability and awarded the compensation on a percentage basis.

6. Mr.C.Paraneedharan, learned counsel appearing on behalf of the appellant would submit that the Tribunal below has totally ignored Ex.P14 disability certificate. The case summary and discharge records have been filed along with Ex.P7 to P9, the same has been enclosed in the typed set of papers.

7. Heard the learned counsel for the appellant.

8. A perusal of Ex.P7 to P9 would clearly demonstrate how the person who has given the treatment is not the person who has assessed the disability. Ex.P7, is the case summary and discharge records dated 29.04.2016 of C.M.Hospital Namakkal, which was the hospital to which the appellant has been admitted for the initial treatment and thereafter, he has been shifted to at the request of the appellant's relatives to the Ganga Hospital, Coimbatore, where the appellant had undergone a surgery. Thereafter, it appears that he has filed Ex.P9 discharge summary dated 23.08.2016 where the discharge summary has been given which shows that the petitioner had undergone a symptomatic treatment like shoulder manipulation and to improve the range of shoulder joint movements. The discharge summary



does not give any details of any disability. Further, on 15.11.2019, merely three years thereafter, the hospital has issued disability certificate wherein the doctor has not referred to Ex.P7 records which is the first medical examination after the accident. Therefore, this Court is unable to accept the percentage of disability shown in Ex.P14 disability certificate and the Tribunal below has rightly come to the conclusion that the disability is not a permanent one and it also not affected the functioning of the appellant/claimant. In all, the Tribunal below has given sufficient compensation to the claimant and therefore, I do not see any reason to enhance the compensation to the appellant/claimant.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.440 of 2016 dated 30.04.2021, is confirmed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ssn
To

1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate Court,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.464 of 2022

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