



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.01.2022	Delivered on: 07.03.2022
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1380 of 2018

Murugan

.. Appellant/Petitioner

Vs.

1. Chembayan

2. The Divisional Manager,
The New India Assurance Company Limited,
CSI Building, 2nd Floor,
No.1, Officers Line,
Near the Ooris College,
Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.06.2017 made in M.A.C.T.O.P.No.157 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Thiruvannamalai.

For Appellant : Ms.A.Subadra for
Mr.F.Terry Chellaraja

For 2nd Respondent : Mr.K.Thirunavukkarasu

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant for enhancement of compensation awarded by the Tribunal, dated 01.06.2017 made in M.A.C.T.O.P.No.157 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Thiruvannamalai.

2. The appellant is the claimant in M.A.C.T.O.P.No.157 of 2015 on the file of the Motor Accident Claims Tribunal, Special



Subordinate Judge, Thiruvannamalai. He filed the above said 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 05.01.2015. According to the appellant, on 05.01.2015, at about 3.30 pm, while he was traveling as a pillion rider in the Motor cycle bearing registration No.TN 25 AL 2524 along with his brother one Sekar, at the extreme left side of the road, near Kozhudhanpattu junction Road towards Keezhsirupakkam Village, a Tata Indica car bearing Registration No.TN 25 AF 7819 came from the opposite direction in a rash and negligent manner and dashed against the Motorcycle in which the appellant was travelling as a pillion rider. As a result, the appellant along with his brother were thrown out from the Motor cycle and sustained injuries all over the body. Hence, the the claim petition was filed.

3. The second respondent, Insurance Company filed a counter statement denying the allegations stated in the claim petition. In the counter statement, it is stated that the age, occupation, income and manner of accident and injuries sustained by the claimant/appellant have to be proved by relevant documentary evidence and the second respondent's liability is limited and subject to the terms and conditions of the contract of Insurance. If there is a any violation of policy conditions, the respondent is not liable to pay compensation to the claimant. It is further stated that the driver of the alleged Tata Indica Car did not possess valid and effective driving license and the said vehicle was not insured with the respondent's company at the time of accident and the compensation claimed under various heads are highly exaggerated and excessive. Further, it is stated that the claimant had not impleaded the owner and the Insurance Company of the Bajaj Discover two Wheeler who are necessary parties to the claim petition for proper adjudication of the case. Hence, he prayed for dismissal of the claim petition on the ground of non-joinder of necessary parties.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the appellant had sustained simple injuries in the accident occurred on 05.01.2015 and directed the 1st and 2nd respondents jointly and severally to pay a lumpsum amount of Rs.5,000/- as compensation to the appellant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant contended that in the accident occurred on 05.01.2015, the appellant sustained grievous injury and fracture of both bone in his left leg. He was admitted at Government General Hospital,



Tiruvannamalai where he incurred huge expenses and slowly recovered from the injuries sustained in his legs. While so, the Tribunal ought to have awarded separate amount towards permanent disability. The appellant was also admitted in Vijaya Institute of Trauma and Orthopedics as inpatient from 11.06.2015 to 24.06.2015 for taking treatment and again admitted as inpatient from 17.10.2015 to 23.10.2015 in the same hospital for further treatment and thereafter continued treatment as outpatient. But the Tribunal has not awarded any amount towards transportation, extra nourishment, pain and suffering and attendant charges. The Tribunal has awarded only a lumpsum amount of Rs.5,000/- towards compensation to the appellant, which according to the appellant, is very meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent-Insurance company contended that the Tribunal after considering the oral and documentary evidence, had rightly held that the appellant herein has sustained only simple injuries in the Accident as per Ex.P2, Accident Register Copy. It is further contended that the appellant herein sustained grievous injuries in a road accident 4 years prior to the present accident and the same was clearly mentioned in Ex.P4, Discharge Summary issued by the Vijaya Institute of Trauma and Orthopedics. The learned counsel for the second respondent further contended that the appellant herein was discharged from the hospital within two days from the date of accident i.e., from 05.01.2015 to 08.01.2015. Thereafter, from 11.06.2015 to 24.06.2015 i.e., after six months, he took treatment at Vijaya Institute of Trauma and Orthopedics and again taken treatment from 17.10.2015 to 23.10.2015 as inpatient for the injuries sustained by the appellant, which is not related to the accident occurred on 05.01.2015. He further contended that the Tribunal after analyzing every fact, had rightly rejected the claim of the appellant and awarded a sum of Rs.5,000/- as compensation for the simple injuries sustained by the appellant, which does not warrant interference by this Court.

8. Admittedly there is no dispute with regard to the date and mode of accident and the injuries suffered by the appellant. On careful perusal of EX.P2, Accident Register Extract / copy of wound certificate, it shows that the appellant sustained Laceration measuring 0.5x0.5 cm Occipital Region and Tenderness over Left Leg. He was admitted in Thiruvannamalai Government Medical College Hospital on 05.01.2015 at 6.25 pm and discharged from the hospital on 08.01.2015 by 1.00 pm. The X-Ray taken at left leg and the report of which shows that there was old fracture in both bone left leg prosthesis. The opinion of the Doctor, at Government Hospital Thiruvannamalai Medical College Hospital is that the injuries sustained by the appellant in the accident occurred on 05.01.2015, are simple in nature.



9. Though there was a forceful argument by the learned counsel for the appellant that the appellant sustained both bone fracture in the accident took place on 05.01.2015 and he took treatment, Ex.P4, Discharge Summary clearly shows that the appellant was admitted on 11.06.2015 with a complaint of pain in left leg due to skid and fall at home two months ago and he was unable to walk since then. This would prove that the appellant has taken treatment for the injuries sustained by him due to fall at home and not due to the accident which occurred on 05.01.2015. It is also clear that there is no nexus between simple injuries sustained by him on 05.01.2015 and the complaint of pain on 11.06.2015. There is no dispute that the appellant sustained fracture of both bone in left leg and underwent ORIF with plating left Tibia in the Government Hospital, Chennai and if the appellant has sustained such grievous injuries on 05.01.2015, definitely he would have not been discharged on the third day i.e., on 08.01.2015. Hence the contention of the learned counsel for the appellant that the appellant sustained grievous injuries with 30% disability due to the accident occurred on 05.01.2015 cannot be taken into consideration and has to be simply rejected. The Tribunal has also elaborately discussed the above facts in its order and based on the documentary evidence, had rightly held that the appellant herein sustained only simple injuries in the accident occurred on 05.01.2015 and awarded a sum of Rs.5,000/-.

10. However, in the considered opinion of this Court, the lumpsum amount of Rs.5,000/- awarded by the Tribunal for the simple injuries sustained by the appellant in a road accident occurred on 05.01.2015 is very meagre and a reasonable amount of Rs.15,000/- (Rupees Fifteen Thousand only) shall be awarded for the injuries sustained by the appellant to meet the ends of justice.

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed, modifying the Judgment and Decree dated 01.06.2017 made in M.A.C.T.O.P.No.157 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Thiruvannamalai to the extent indicated above. The Insurance Company is directed to deposit the amount now determined in this appeal with interest at the rate 7.5% p.a. On such deposit, the appellant/claimant is permitted to withdraw the entire compensation amount with accrued interest. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Thiruvannamalai.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.F.Terry Chellaraja, Advocate, S.R.No.15228

C.M.A.No.1380 of 2018

AJB(CO)
SU(26/04/2022)