



C.M.A.No.4022 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.4022 of 2019

A.Karunanidhi

... Appellant / Petitioner

Vs

1.Senthil Kumar

2.TATA AIG Insurance Company Limited

113/134, Raheja Towers, Anna Salai

Chennai.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 (Act IV of 1939) praying to enhance the award against the judgment and decree dated 05.12.2017 in M.C.O.P.No.230 of 2014 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.C.Thangaraju

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For Respondent-1: Served-No Appearance

For Respondent-2: Mr.K.Vinod

JUDGEMENT

Seeking enhancement of the Award, the petitioner before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal has filed this appeal.

2. The facts in brief are as follows:-

(i) The appellant herein had filed M.C.O.P.No.230 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal, claiming compensation of a sum of Rs.10,00,000/- for the injuries sustained by him in a road accident. It is his case that on 01.11.2013 at about 11.00 pm, he was travelling in a two wheeler, bearing Registration No.TN-28-AA-7764 and proceeding on the Namakkal to Valayapatti road keeping to the extreme left. While so, the motor-cycle bearing Registration No.TN-30-AF 3424 came in the opposite direction, the vehicle was driven by its driver in a rash and negligent manner, as a result

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of which, it had hit the petitioner's vehicle causing him to suffer grievous injury. The motor-cycle belonged to the first respondent and was insured with the second respondent-Insurance Company.

(ii) The rider of the bike had been charge sheeted and since the vehicle has been insured with the second respondent, the second respondent was also impleaded. The first respondent remained *ex-parte* and the second respondent-Insurance Company had filed a counter stating that the accident had occurred on account of the negligence of the petitioner himself. Therefore, considering the fact that he has contributed to the accident, the Insurance Company was not liable to indemnify for his loss.

3. The Tribunal below, after considering the evidence on record, held the negligence with the driver of the first respondent's vehicle, since there was a violation of the policy conditions in as much as the driver of the motor-cycle did not possess a valid driving licence. The Tribunal had directed the second respondent-Insurance Company to pay the entire



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compensation and recover the same from the first respondent. Aggrieved by the fact that the Tribunal below has granted compensation by adopting percentage method instead of the multiplier method, the appellant is before this Court.

4. Mr.K.Vinod, learned counsel appearing for the second respondent-Insurance Company would contend that the disability certificate issued by P.W2-Doctor cannot be relied upon, since in the said certificate, P.W2 would state that 2, 3, 4 and 5 fingers in the left leg of the appellant had been amputated. However, the said statement is proved to be false, on a mere perusal of the photographs filed in typed set of papers. Therefore, he would submit that the disability calculated on the basis of disability certificate-Ex.P10 granted by P.W2 has to be accepted with the pinch of salt.



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5. Heard both counsels and perused the materials available on record.

6. As rightly pointed by the learned counsel for the second respondent, enhancement is sought for only on the basis of the disability assessed by P.W2-Doctor has not been properly considered by the Tribunal, as result of which, the Tribunal has awarded compensation on a percentage basis. However, a perusal of the report as set out in the order and a glance at the photographs of the appellant, which has been produced by the appellant would clearly show that what has stated in the certificate is an absolutely false statement. A perusal of the injuries suffered does indicate that that the appellant has suffered a disability, which however does not hinder the appellant's movements nor has it caused any loss of earnings. Therefore, the adoption of percentage method by the Tribunal below is in order. The Insurance Company has not challenged the award. Therefore, I do not deem it fit to reduce the assessment of disability, as requested by the learned counsel for the respondent-Insurance Company. I see no reason for



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enhancing the compensation awarded by the Tribunal.

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7. Accordingly, the civil miscellaneous appeal is dismissed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
srn

To

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



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P.T.ASHA, J.,

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