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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.2005 OF 2017

S.Vaidyanathan

...Appellant/
Petitioner

Vs.

1. R.Shanmugasundaram

2. The New India Assurance Company Ltd.,
No.80, Arcot Road,
Porur, Chennai - 116.

..Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order dated 12.03.2013 made in M.C.O.P.No.295 of 2011 on the file of the Motor Accident Claims Tribunal, III-Additional District & Sessions Court, Poonamallee.

For Appellant : Ms.Maithri Mahalingam

For Respondents: Mr.K.Padmanabhan for R2
R1-Experte

J U D G M E N T

The claimant in MCOP.No.295 of 2011 on the file of the Motor Accident Claims Tribunal / III-Additional District Court, Poonamallee, Tiruvallur District is the appellant herein. The appellant, is aggrieved by the quantum of compensation granted towards injuries suffered in a motor accident, which compensation had been determined at Rs.1,50,500 /- by the Tribunal by judgment dated 12.03.2013. The appellant seeks enhancement.

2.The claimant / appellant was 57 years at the time of the accident. He stated that he was working as Senior Management



Executive in Unity Forge Private Limited at Maraimalai Nagar. The accident occurred on 15.12.2010 at around 06.10 p.m. According to the claimant, when he was walking in the GST road at Chrompet, the motor vehicle belonging to the 1st respondent bearing registration number TN 20 AY 8158 hit against him, owing to which, he felt down and suffered injuries. The nature of injuries suffered by him are compound comminuted fracture of both bones right leg and cut injury on the left leg and other serious multiple injuries over the body. He was initially treated in SP Hospital at Adambakkam and took treatment as inpatient from 15.12.2010 to 19.12.2010. He claimed that owing to the accident, he could not walk properly, he could not sit cross legged and he could not use the Indian Washroom and that therefore, he had been put to much difficulty and pain and suffering. Claiming compensation for the injuries suffered by him, he filed the aforementioned claim petition before the Tribunal. It must also be mentioned in this connection that the jurisdictional police had also registered a First Information Report in Crime No.1736 of 2010. The 2nd respondent / New India Assurance Company had entered issues with respect to the claim petition and had also filed a counter affidavit.

3. During the trial, the claimant examined himself as P.W.1 and also examined Dr. Subramaniam, who assessed his disability, as P.W.2 and also examined an independent witness, Tr. R. Sekar as P.W.3. The 2nd respondent / Insurance Company did not adduce any oral or documentary evidence. The claimant also marked the First Information Report as Ex.P1, the discharge summary as Ex.P2, the prescription slip and medical bills as Exs.P3 and P4 and his pay certificate as Ex.P5. The disability certificate issued by P.W.2 was marked as Ex.P8.

4. The Tribunal framed the following points for consideration:-

i) Whether the accident occurred due to the rash and negligent driving by the driver of the First Respondent's vehicle?

ii) Whether the petitioner is entitled for compensation? If so against whom and to what quantum?

5. With respect to the first issue, the Tribunal found that as a fact the claimant was walking in the GST Road at Chrompet when the offending motor vehicle bearing registration number TN 20 AY 8158 dashed against him and answered issue placing negligence on the part of the driver of the motor vehicle. Let me not disturb that finding and uphold it.

6. With respect to the second issue regarding the compensation payable, it was observed that the claimant was



working as a Senior Management Executive in the Unity Forge Private Limited and had also produced his salary certificate as Ex.P5, in which, his salary is shown as Rs.25,000/-. Thereafter, the Tribunal entered into a discussion stating that no other independent witness was produced to substantiate that particular salary. The Tribunal also stated that further documents such as attendance register, pay acquittance, pay slips had not been produced.

7.The learned counsel for the appellant herein assailed that portion of the finding of the Tribunal stating that the pay certificate had been produced and there has been no cross-examination questioning the genuinity of the said certificate and therefore, urged that the Tribunal should not have undertaken that particular task on itself to question the veracity of the pay certificate when the respondent themselves had not questioned the genuinity of the same.

8.It is also be noted that the respondent had also not adduced any evidence to state that the certificate produced cannot be taken into account by the Tribunal at its face value. The Tribunal however, on the basis of the aforementioned reasoning had determined the monthly income at Rs.10,000/-. That, in my opinion, is an exercise of discretion, which has to be interfered with. The salary certificate had been produced and it reflects the monthly salary as Rs.25,000/-. The claimant can do nothing more. If at all the respondent doubted that salary certificate, then they should have, in the first instant cross-examined the witness about the veracity and genuinity of the document. They should have then proceeded to summon the particular private company official, who issued the salary certificate.

9.It must be kept in mind, the Tribunal is vested with the powers of a Civil Court under Section 169 of the Motor Vehicles Act, 1989. During the course of the Trial and while conducting enquiry under section 168 of the Motor Vehicles Act, section 169 of the Motor Vehicles Act specifically states that the Tribunal is a civil court. The Tribunal has powers to summon witnesses. This power to summon witness can be sought to be exercised not only by the claimant but also by the respondent. It should be called upon to be exercised by that party, which questions a particular document and the veracity of that particular document.

10.The 2nd respondent / Insurance Company had not thought it necessary to even put one simple question regarding the salary certificate produced by the appellant herein. Therefore, in the absence of any evidence on that aspect, coming to a conclusion by the Tribunal that the appellant would have earned just



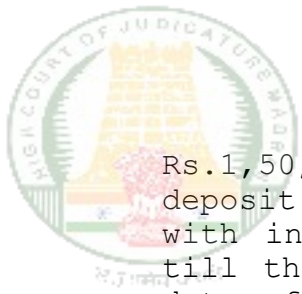
Rs.10,000/- in spite of having produced the salary certificate for a sum of Rs.25,000/-, in my opinion, requires interference by this Court. I would therefore, give some benefit to the appellant herein but, at the same time also consider the fact that there has been no evidence to substantiate the salary certificate and therefore, I would determine the monthly income at Rs.15,000/-.

11.The discharge summary had been produced as Ex.P2 and it shows that the appellant had been admitted as inpatient from 15.12.2010 to 19.12.2010. The quantum of loss of income was determined at Rs.10,000/- by the Tribunal and I would not interfere with that finding. With respect to the transport charges, the Tribunal had granted a sum of Rs.4,000/- and a sum of Rs.3,000/- for extra nourishment, which amounts I would not interfere with. It appears that Ex.P4, medical bills had been produced for a sum of Rs.33,410/- and the Tribunal had granted a sum of Rs.33,500, which amount I would not interfere with. With respect to loss of pain and suffering, the Tribunal had granted a sum of Rs.30,000/-. Taking into account the manner, in which the accident occurred and the nature of the injuries, let me not disturb that particular grant.

12.P.W.2 had issued Exs.P8 and P9 and determined the partial permanent disability at 35%. The Tribunal had accepted such percentage but had taken Rs.2,000/- per percentage for disability and granted a sum of Rs.70,000/-. I would increase the same to Rs.3,000/- per percentage and the amount for permanent disability should then be revised to Rs.1,05,000/-. Since the appellant had been in Hospital for a period of five days, I would grant attender charges at Rs.3,000/-. The total compensation now granted would be as follows:-

Heads	Amounts
Loss of earning	Rs.15,000/-
Transportation	Rs.4,000/-
Extra Nourishment	Rs.3,000/-
Medical Bills	Rs.33,500/-
Loss of pain and suffering	Rs.30,000/-
Permanent disability	Rs.1,05,000/-
Attender charges	Rs.3,000/-
Total	Rs.1,93,500/-

13.The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as



Rs.1,50,500/- to Rs.1,93,500/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.43,000/- with interest at 7.5% from the date of filing of the petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To-

The Motor Accident Claims Tribunal,
III-Additional District & Sessions Judge,
Poonamallee.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.2005 of 2017

SR II (CO)
PM/07/04/2022