



WEB COPY



C.M.A.No.50 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.50 of 2017

Issac Newton

... Appellant

Vs.

1. Sri Mummurthi & Villas Products,
No.160/100, Coral Merchant Street,
Chennai – 600 001.

2. United India Insurance Co. Ltd.,
No.64, Armenian Street, Parrys,
Chennai – 01.(Catholic Centre).

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 03.02.2016 made in M.C.O.P.No.4119 of 2013 on the file of Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.D.Baskaran R2

Not ready in Notice [R1]

JUDGEMENT

Page No.1 of 7



C.M.A.No.50 of 2017

WEB COPY

Assailing the judgment and decree passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the claimant/appellant seeking enhancement of compensation.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) On 01.05.2013 at about 7:10 pm while the claimant was riding his motor cycle bearing Reg.No.TN 21 G 0083, the offending motor cycle bearing Reg.No.TN 04 AF 0807 coming in the opposite direction driven by its driver in a rash and negligent manner hit against the petitioner's motor cycle resulting in the petitioner falling down and sustaining grievous injuries . The accident occurred by the rash and negligent driving by the driver of the offending motor cycle and therefore for the injuries sustained the appellant filed a claim petition claiming a sum of Rs.6,00,000/- as compensation.

3. Before the Tribunal, the claimant examined witnesses P.W.1 and P.W.2 and marked 16 documents viz., Ex.P.1 to Ex.P.16. No witnesses were examined nor any documents were marked on the side of the respondents.



C.M.A.No.50 of 2017

WEB COPY

The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.2,91,000/- as compensation under various heads. Not satisfied with the same, the present appeal has been filed by the claimant seeking enhancement.

4. The learned counsel appearing for the appellant submits that though P.W.3 Doctor has assessed disability at 60% however, without any basis the the Tribunal decreased the percentage to 30% which is wholly erroneous in spite of the grievous injuries sustained by the appellant. In fact, the grant of Rs.90,000/- towards disability inspite of the nature of the injuries clearly reveal the arbitrariness of the order passed by the Tribunal. The learned counsel for the appellant submits that the amounts awarded under various heads are on the lower side and the same requires enhancement.

5. The learned counsel appearing for the second respondent / insurance company submits that P.W.3 Doctor who has assessed the disability at 60% is not an orthopedic surgeon and therefore the Tribunal



C.M.A.No.50 of 2017

WEB COPY

decreased the disability to 30% which cannot be held to be erroneous.

Further the amounts awarded under various head are just and reasonable and the same does not require any interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials placed on record.

7. The factum of the accident is not in dispute and so also the injuries suffered by the claimant is not disputed. There is no quarrel with regard to the negligence or liability. The only issue that has been projected by the appellant / claimant is that the assessment of disability by the Doctor P.W.3 at 60% which has been brought down to 30% is erroneous. Further the compensation awarded under other heads are also meagre. In this regard, a perusal of the evidence of the Doctor P.W.3 coupled with Ex.P.16 as also the discharge summary and scan report in Ex.P.3 and P4 reveals the nature of injuries suffered by the appellant / claimant. P.W.3, the Doctor who has



C.M.A.No.50 of 2017

issued the disability certificate is not a qualified orthopedic surgeon but is a general physician who has assessed the disability.

8. When the medical opinion in a particular field has to be given by the expert who alone will be the best person to assess the disability. Obtaining an opinion from a general physician with regard to the percentage of disability cannot form the basis for this Court to accept the same and it is always within the scope of this Court to analyse the certificate and arrive at the justifiable percentage of disability. Bringing the said exercise, the Tribunal has arrived the disability at 30% and adopted percentage method and awarded a sum of Rs.90,000/- which cannot be said to be erroneous. Insofar as the claim of the appellant that the compensation awarded under other heads are meagre and requires enhancement, this Court has gone through the compensation awarded under various heads, considering the nature of injuries sustained by the appellant and the compensation awarded under various heads more particularly pain and suffering , extra nourishment, transportation expenses and attender charges, this Court is of



C.M.A.No.50 of 2017

WEB COPY

the considered view that the award under the said heads are just and reasonable so also the award under the head future medical expenses to the tune of Rs.10,000/- is also just and reasonable. Therefore the enhancement sought for by the appellant cannot be granted.

9. Accordingly, this appeal stands dismissed. No costs.

19.10.2023

Index : Yes / No
speaking Order : Yes / No
Neutral Citation Case : Yes / No
rap

To

1. Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.50 of 2017

M.DHANDAPANI,J.,

rap

C.M.A.No.50 of 2017

19.10.2023