



C.M.A(MD)No.210 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.210 of 2017

Thirunavukkarasu

... Appellant/Claimant

Vs.

1.Sureshkanna

2.The Branch Manager,

IFFCO TOKYO General Insurance Co., Ltd.,

No.221, ALS Complex, 1st Floor,

Sekkalai Road,

Karaikudi Town,

Sivagangai District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to allow the appeal to the effect that so as to enhance the compensation to the tune of Rs.1,00,000/- in addition to compensation awarded by the Tribunal by modifying the judgment and decreetal order made in M.C.O.P.No.368 of 2012, dated 23.04.2016 by the learned Motor Accident Claims Tribunal/III-Additional District and Sessions Judge, Thanjavur at Pattukkottai.

For Appellant : Mr.S.Deenadhayalan

For R2 : Mr.V.Sakthivel



C.M.A(MD)No.210 of 2017

JUDGEMENT

WEB COPY

The present appeal has been filed by the injured claimant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Thanjavur at Pattukottai.

2. The claimant while he was travelling in his Bolero car, the said car had capsized and the appellant had sustained injuries in his right shoulder. The appellant has filed M.C.O.P.No.368 of 2012 seeking a compensation of Rs.5,00,000/- (Rupees Five Lakh only).

3. It is further submitted that the claimant was originally taken to Government Hospital, Kadaladi and thereafter, he was admitted to Elangovan Hospital at Pattukottai where he is said to have been an in-patient from 13.01.2012 to 20.01.2012. The Orthopedic doctor who has given treatment to the claimant in the said Elangovan hospital has issued a disability certificate under Ex.P.9 to the effect that the claimant has sustained 10% partial permanent disablement.



C.M.A(MD)/No.210 of 2017

WEB COPY

4. The tribunal after considering all the documents, came to a finding that the claimant has suffered some injuries in the right shoulder, but the tribunal has rejected all the medical bills filed by the claimant under Ex.P.8 on the ground that they do not relate to the period of accident. Ultimately, the tribunal has awarded only a sum of Rs.15,000/- (Rupees Fifteen Thousand only) for the injuries sustained by the claimant. This order is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the disability certificate issued by a competent doctor cannot be disregarded by the Court and ignoring the said disability certificate, award cannot be passed. He further contended that the medical bills amount totalling a sum of Rs.40,000/- (Rupees Forty Thousand only) have not been taken into consideration by the trial Court on the ground that they do not relate to the accident period. The learned counsel appearing for the appellant had further contended that the claimant was an in-patient in Elangovan hospital for a period of one week as per the deposition of the doctor who has given treatment. However, the said fact has also not been taken into consideration. Hence, he prayed for



C.M.A(MD)No.210 of 2017

enhancement of compensation for a further sum of Rs.1,00,000/- (Rupees One Lakh only).

WEB COPY

6. Per contra, the learned counsel appearing for the insurance company had contended that no records have been placed before the Court that the claimant was an in-patient for a period of one week. He further pointed out that the medical bills are related to a period which are 2 years after the accident. Therefore, he prayed for sustaining the award passed by the tribunal.

7. I have carefully considered the submissions made on either side.

8. As rightly contended by the learned counsel for the appellant, the tribunal cannot disregard or ignore the disability certificate issued by the doctor who has given treatment, unless some extraordinary circumstances are made out by the insurance company. In the present case, the doctor who has given treatment to the claimant had given the disability certificate and he has also been examined as P.W.2. Therefore, I find no reason to disregard the disability certificate Ex.P.9. Calculating the compensation for 10% disability at the rate of Rs.2,000/- (Rupees



C.M.A(MD)No.210 of 2017

Two Thousand only) per percentage, it would amount to Rs.20,000/-

(Rupees Twenty Thousand only). The tribunal has not awarded any sum

towards transport expenses and this Court finds that a sum of Rs.2,000/-

(Rupees Two Thousand only) could be awarded towards transport

expenses and another sum of Rs.1,000/- (Rupees One Thousand only)

could be awarded for extra nourishment due to the injuries in the

shoulder. The appellant would be entitled to medical expenses to a sum

of Rs.2,000/- (Rupees Two Thousand only) and another sum of

Rs.5,000/- (Rupees Five Thousand only) towards pain and suffering. In

total, the claimant would be entitled to a sum of Rs.30,000/- (Rupees

Thirty Thousand only).

9. In view of the above said discussion, the appeal is partly allowed enhancing the total award amount to a sum of Rs.30,000/-

(Rupees Thirty Thousand only). The said enhanced amount of

Rs.15,000/- (Rupees Fifteen Thousand only) shall be paid with interest at

the rate of 7.5% from the date of claim petition. The insurance company

is granted four (4) weeks time to deposit the enhanced amount from the

date of receipt of a copy of this order.



C.M.A(MD)No.210 of 2017

WEB COPY

10. With the said observations, this Civil Miscellaneous Appeal stands partly allowed. No costs.

08.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

gbg

To

1.The Motor Accident Claims Tribunal/I
II-Additional District and Sessions Judge,
Pattukkottai,
Thanjavur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.210 of 2017

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.M.A(MD)No.210 of 2017

08.03.2023