

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2786 of 2009

M.S.Sivakumar

.. Appellant

Vs.

1.CMS Securitas Ltd.,
The Citadel, No.40, Venkataraman Street,
T.Nagar, Chennai – 600 017.

2.National Insurance Co. Ltd.,
Motor Third Party Claims Cell,
751, Anna Salai 3rd Floor,
Chennai – 600 002.

.. Respondents

(R1 was set *ex parte*)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.04.2009 M.A.C.T.O.P.No.5379 of 2004 on the file of the III Judge. Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant	: Mr.K.V.Muthuvisakan
For Respondents	: Mr.D.Bhaskaran [for R2]
	R1 – Ex parte

JUDGMENT

The appeal is preferred by the claimant in MCOP.No.5379 of 2004 on the file of the III Court of Small Causes, Chennai, seeking enhancement of compensation awarded to him for the injury suffered in a road accident.

2.The brief set of facts that are essential for considering this appeal are that on 19.10.2004 while the claimant was riding his motor cycle, he was hit by a jeep bearing registration No.TN09-AC-0119 belonging to the first respondent and insured with the second respondent. In the said accident, the claimant had suffered skull fracture as well as facial bone fracture, and on various heads he made a total claim of Rs.2,00,000/- before the Tribunal. On considering the evidenciary materials before it, the Tribunal passed an award for Rs.1,09,491/-.

3. Before this Court the appellant has made only two points : (i) Vide Ex.P15 – Disability Certificate, P.W.3 assessed the disability and determined it at 45%. The Tribunal, however, has arbitrarily reduced the percentage of disability and fixed it at 20%. It calculated the compensation due on this head @ Rs.1,500/- per percentage of disability and arrived at the total compensation payable at this head as Rs.30,000/-; (ii) on the head of "pain and suffering, the Tribunal had awarded Rs.22,000/-. However, the nature of the injury suffered by the claimant is to the head and as its after effect he continues to suffer residuary pain from which permanent cure does not appear a possibility and consequently the compensation payable on this head needs an enhancement.

4.The learned counsel for the Insurance Company, the second respondent herein, submitted that the Tribunal has determined the quantum of disability reasonably and it does not require to be interfered with.

5. The material papers of the Tribunal are perused. The insured is stated to be aged 38 years at the relevant time and he was working as a Project Engineer. No doubt he is not said to have suffered any future loss of earning capacity but still this Court finds given the kind of injury that he has suffered, he should have been paid for the percentage of disability that P.W.3 had assessed. Accordingly, the total amount payable on this head is determined as Rs.67,500/- being the product of 45% disability at Rs.1,500/- for percentage of disability. I also find some merit in the submission of the learned counsel for the appellant that the skull fracture and facial bone fracture has left some residuary pain which the appellant has to endure through out his life. Therefore, I enhance the compensation payable on this head to Rs.40,000/-. For extra nourishment Rs. 5,000/- is awarded.

6. Thus, the total award determined by the Tribunal is enhanced by another Rs.60,500/- $[(67,500 - 30,000) + (40,000 - 22,000) + 5,000]$. Hence, this Civil Miscellaneous Appeal is allowed with a direction to the Insurance Company to deposit this enhanced amount with interest at the rate of 7.5% per annum along with the award amount if it is not already desposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same forthwith. No costs.

23.11.2016

ds

Index : Yes/No

Internet : Yes/No

N.SESHASAYEE,J

ds

To:

The Motor Accident Claims Tribunal,
(III Court of Small Causes),
Chennai.

C.M.A.No.2786 of 2009

23.11.2016

<http://www.judis.nic.in>