

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.624 of 2014

Gawahar Basha

... Appellant/Petitioner

-Vs-

1. J.Gunasekaran

2. The United India Insurance Co.Ltd.,
New No.82, North Mada Street
Temple Circle Complex, Mylapore
Chennai 600 004

... Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 06.07.2011 made in M.C.O.P.No.1803 of 2007 on the file of the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Mr.P.D.Selvaraj

For Respondents : Mr.G.Udayasankar for R2
R1-Ex parte before the Tribunal

JUDGMENT

The injured claimant has come to this Court seeking enhancement of compensation. It is a case of injury sustained by a 19 year old Fitter earning a sum of Rs.7,000/- per month from ARM Engineering Works at the time of accident.

2. Learned counsel for the appellant-injured submitted that on 31.1.2006 at about 19.15 hours, when the claimant was riding his motorcycle bearing Registration No.TN 01 U 4788 at Kamarajar Salai, near Tamil Nadu Slum Clearance Board office, Chennai from south to north direction, a van bearing Registration No.TN 31 2426 proceeding from north to south direction hit the motorcycle, as a result the rider of the motorcycle sustained grievous injuries all over his body. After taking initial treatment at Government Royapettah Hospital, Chennai, he was shifted to St.Isabel's Hospital, Chennai for further treatment. Since the claimant sustained fracture shaft of right femur,

fracture shaft right tibia and multiple injuries all over his body, he lodged a complaint against the driver of the offending vehicle with regard to his rash and negligent driving and accepting his complaint, a First Information Report was also registered by D6 Anna Square Traffic Investigation Wing in Crime No.38/T2/2006, which was marked as Ex.P5. The Tribunal, finding that there was no contra evidence to rebut the evidence of P.W.1, finally held that the accident had taken place due to the rash and negligent driving of the driver of the offending van bearing Registration No.TN 31 2426. After answering the question of negligence against the offending driver of the van bearing Registration No.TN 31 2426, it has also saddled the liability on the insurance company, since the insurance coverage was available for the said vehicle.

3. Coming to the quantum of compensation, he pleaded that it is an admitted case that after the accident, the injured was taken to Government Royapettah Hospital, Chennai. After feeling that he was not treated well, he was shifted to St.Isabel's Hospital, Chennai, wherein he was taking treatment as an in-patient from 1.2.2006 to 21.2.2006. Since he sustained injury in his right femur and tibia, on further examination, it was found that he sustained both bone femur fracture, for which a surgery was conducted on 14.2.2006, wherein a closed interlocked IM femur nailing and also a Sirus 10x360 mm titanium nailing was done on the injured. Thereafter, closed interlocked IM tibial nailing and SUN 9x330 mm SS nailing was also done. To support the sustaining of grievous injuries, the injured has given evidence before the Tribunal that he was again admitted in St.Isabel's Hospital from 29.3.2010 to 3.4.2010 for treating the injuries. Even the discharge summary, Ex.P3 has substantiated the case of the injured that he underwent a surgery in his right femur and right tibia and nailing was also done and only for removal of the implants, he was again admitted in St.Isabel's Hospital on 29.3.2010. After removal of the implants on 30.3.2010, he was discharged from the hospital on 3.4.2010. The above evidence clearly shows that the claimant sustained grievous injuries and he has further proved that he was unable to sit cross legged and unable to use Indian toilet. Therefore, when the injured was facing severe pain while walking and standing coupled with the evidence of Dr.K.J.Mathiazhagan, who was examined as P.W.2, assessing the disability of the claimant at 50% on the basis of medical records, the Tribunal has wrongly accepted 45% disability and at the rate of Rs.2,000/- per percentage of disability, has awarded a sum of Rs.90,000/- alone under this head, which is required to be enhanced. Adding further, he submitted that when the injured had proved that he was working as Fitter in ARM Engineering Works on a monthly salary of Rs.7,000/-, the Tribunal ought to have fixed a sum of Rs.3,000/- per percentage of disability.

4. Replying to the above contentions, the learned counsel for the second respondent insurance company submitted that the contention as to mal-union of the bones sustained by the injured is totally misconceived, because the finding given by the Tribunal clearly shows that the bones are not mal-united. On the other hand, they are well united as per the discharge summary, Ex.P1. It further mentions that the united fracture in the right femur and right tibia shaft have grown, therefore, taking into account that there is no mal-union, the disability recommended by the doctor-P.W.2 at 50% should not have been accepted by the Tribunal.

5. I find no merits in his submissions. When the doctor has certified 50% of disability on the injured considering the fact that after sustaining multiple injuries, he was admitted for the first time in the Government Royapettah Hospital, Chennai and after finding no effective treatment, he was shifted to St.Isabel's Hospital, wherein he was taking treatment as an in-patient from 1.2.2006 to 21.2.2006 and during that time he also underwent a surgery as per the discharge summary, Ex.P1, which further shows that there was femur fracture of both bones necessitating the surgery on 14.2.2006, in which a closed interlocked IM femur nailing and also a Sirus 10x360 mm titanium nailing was done on the injured and thereafter closed interlocked IM tibial nailing and SUN 9x330 mm SS nailing was also done, the Tribunal, in my considered opinion, although accepting 45% disability on the ground that the disability so assessed will vary from doctor to doctor, should have fixed Rs.3,000/- per percentage of disability. As this has not been done, considering the multiple grievous injuries sustained by the injured, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability and accordingly a sum of Rs.1,35,000/- for 45% disability is awarded under this head, instead of Rs.90,000/- awarded by the Tribunal.

6. While coming to the compensation awarded under the other heads, the Tribunal has awarded only Rs.25,000/- towards pain and suffering. As mentioned above, when the injured was taking treatment as an in-patient in St.Isabel's Hospital from 1.2.2006 to 21.2.2006 in the first spell and again admitted in the same hospital for removal of the implants for a period of six days viz., 29.3.2010 to 3.4.2010, he might have experienced much pain. Hence a sum of Rs.75,000/- is fixed under this head. The Tribunal has awarded only a sum of Rs.5,000/-, Rs.3,000/- and Rs.2,000/- towards transportation, extra nourishment and attender charges. This Court, considering the said sum as nominal, is inclined to award a sum of Rs.20,000/- each under these heads. As the injured was working as Fitter at the time of accident in ARM Engineering Works on a monthly salary of

Rs.7,000/-, he would have lost his earnings for five months. Therefore, this Court, instead of Rs.4,500/- per month fixed by the Tribunal, is inclined to fix a sum Rs.7,000/- per month, which has been proved by the salary certificate. Accordingly, a sum of Rs.35,000/- is fixed towards loss of earnings during the period of treatment for five months at the rate of Rs.7,000/- per month. However, the award of the Tribunal towards medical expenses is sustained.

7. In the result, the appellant-injured is entitled to a total compensation of Rs.4,37,215.71p rounded to Rs.4,37,220/- together with interest at the rate of 7.5% per annum from the date of petition till realisation. Since it is stated by the learned counsel for the second respondent that the award amount was already deposited along with interest, the second respondent is directed to deposit the balance amount representing the enhancement along with interest to the credit of the M.C.O.P.No.1803 of 2007 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the appellant to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal, after complying with the formalities. With this modification in the award of the Tribunal, the appeal stands allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai.

2. The Section Officer,
V.R. Section,
High Court, Madras 104.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.70195

+2cc's to Mr.P.D.Selvaraj, Advocate, S.R.No.70426

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SVI(CO)

CA(06/01/2017)