

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

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THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.2691 of 2009

G.Peter .. Appellant/Claimant

Vs.

1.M.Kumar

2.The United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 2. ..Respondents/Respondents

(The first respondent set exparte in the lower Court)

This Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act 1988 against the award passed by the Motor Vehicle Accident Claims Tribunal, Additional District Judge, Fast Track Court No.V, Chengalpattu in MCOP.No.447 of 1999 dated 09.07.2003 and to allow this Appeal.

For Appellant : Mr.K.R.Ponnusamy
For Respondents : Mr.D.Baskaran - R2

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award passed by the Motor Vehicle Accident Claims Tribunal, Additional District Judge, Fast Track Court No.V, Chengalpet in MCOP.No.447 of 1999 dated 09.07.2003

2. Heard Mr.K.R.Ponnusamy, the learned counsel appearing for the appellant and Mr.D.Baskaran, the learned counsel appearing for the Insurance Company.

3.The claimant before the Tribunal seeks enhancement of compensation for the injury that he has suffered in a road accident on 21.11.1998. The appellant/claimant has claimed Rs.1,00,000/- and the Tribunal has granted him a compensation of Rs.45,000/-.

4. The appellant/claimant, while walking along the left side of the road, was knocked down by a two wheeler bearing registration No.TN-04-8 3736 driven by the first respondent. The vehicle was insured by the second respondent. In the accident, the appellant/claimant fractured his right leg and suffered lacerated injuries to his left leg. He was admitted in the hospital immediately after the accident and was discharged three days later on 24.11.2016 as per Ext.P-5 discharge summary issued by the hospital.

5. A summary of the amount claimed and awarded is tabulated below :

Heads	Amount claimed (Rs.)	Amount awarded (Rs.)
Loss of earning (from 21.11.1998 to 20.05.1999)	12,000	3,000/- (for two months)
Transportation to hospital	1,500	1,000/-
Extra nourishment	5,000	500
Damage to clothes	500	500
Medical Expenses	10,000	-
Pain and suffering	15,000	5,000
Permanent disability	35,000	30,000
Loss of earning power	21,000	5,000
Total :	1,00,000	45,000

6. On the head of loss of earning, the Tribunal has fixed his income at Rs.1500/- per month and granted for only two months, which may be technically correct. But, it may not be possible to resume his normal activities in two months time when someone has suffered fracture of the leg. and it has to be granted for a minimum period of five months and hence the compensation awardable under this head is enhanced to Rs.12,500/-.

7. To prove the extent of disability, appellant has examined a certain Dr. Thyagarajan as P.W.2 who has testified that the appellant has suffered 45% disability. He has also stated that the fractured bones are malunited and appellant's mobility of his fractured leg is limited to 80 degrees. While the appellant had produced Ext.P-6 disability certificate he failed to produce X-rays and citing this as the solitary reason the Tribunal has entered a finding that the medical

evidence of an expert as incorrect. Ultimately, the Tribunal limited the extent of disability to 30% and awarded Rs.30,000/- having arrived at the said sum at Rs.1,000/- for every percentage of disability.

8. Primarily a X-ray could only enable one to know if bones are malunited or not, and therefore its non-production cannot render the medical evidence available on record suspicious. While I find it difficult to persuade me to appreciate the approach of the Tribunal, I still find that percentage of disability as determined by the Tribunal might not require any interference as the Tribunal would have had the opportunity to witness the appellant. Having stated thus, it needs to be stated that the appellant was stated to be 55 years and with only partial mobility to his leg it is extremely difficult for him to manage his affairs in the same way in which he would have conducted his affairs. It needs to be emphasised that one who is advancing in age may not be able to cope up with after effects of a fractured bone as well as someone young for the physiological process of healing will be slow and response to curative therapies may not produce absolute results. Hence, to determine the disability forced on the appellant at 40% would be appropriate and the compensation awardable under this head is determined at Rs.40,000/-. For transportation to hospital Rs.1,000/- and for pain and sufferings Rs.10,000/- are granted; and Rs.500/- for nourishment. Accordingly, the award of the Tribunal has to be enhanced and the final enhanced figure arrived at various heads will appear as below :

Heads	Amount (Rs.)
Loss of earning	12,500/-
For permanent disability	40,000/-
Transport	1,000/-
Pain and suffering	10,000/-
Nourishment	1,500/-
Loss of earning power	15,000/-
Total	80,000/-

9. The above enhanced amount is payable to the petitioner along with interest at the rate of as 7.5% per annum and the second respondent is directed to deposit the enhanced amount within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the claimant is entitled to withdraw it forthwith. No costs. Consequently, connected miscellaneous petition is closed.

10. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

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vrc

To:

The Motor Accident Claims Tribunal
Additional District Judge, Fast Track Court No.V,
Chengalpet.

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The Section Officer VR Section
HighCourt Madras

+2 ccs to Mr.D.Baskaran Advocate sr 68375, 67739
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