

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2334 of 2013

Lynin Cormack

... Appellant/Petitioner

.. Vs ..

1. G.Gopi

2. ICICI Lombard General Insurance Company Ltd.,
No.140, 3rd Floor, Chottabai Centre,
Nungambakkam,
Chennai - 600 034. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 28.06.2011 made in M.A.C.T.O.P.No.3942 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (Fast Track Court No.I), Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For R-1 : Ex-parte.

For R-2 : M/s.R.Sreevidhya

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 28.06.2011 made in M.A.C.T.O.P.No.3942 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, (Fast Track Court No.I), Chennai.

2. The facts of the case are as follows:-

On 17.09.2008 at about 19.30 hours when the petitioner as pedestrian at EVR Road, Ega Signal, crossing the road from North to South, the first respondent's motorcycle bearing Registration No.TN-02-AE-8782 came from West to East direction in a rash and negligent manner and dashed against the claimant. In the said accident, the claimant sustained fracture in the hip, compound fracture bimalleolar right ankle and external injuries to all over the body. Claiming a sum of RS.10,00,000/- the claimant had filed a petition for

compensation. The Tribunal, after considering the evidence adduced by both parties, finally awarded a sum of Rs.2,35,000/- towards compensation along with interest at 7.5% per annum from the date of petition till the date of realization with proportionate cost. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the claimant.

3. The learned counsel for the appellant/claimant would mainly contend that the Tribunal has not properly awarded just compensation and the Tribunal ought to have awarded a sum of Rs.1,50,000/- towards loss of earning during the period of treatment and further, the Tribunal ought to have awarded a sum of Rs.25,000/- towards transport expenses. The learned counsel for the appellant further contended that the Tribunal is erred in not awarding any amount under the head of extra nourishment and under the said head, the Tribunal ought to have awarded a sum of Rs.25,000/- and the Tribunal ought to have allowed the claim of Rs.2,00,000/- for cost of treatment and purchase of medicines. The Tribunal ought to have awarded Rs.19,000/- towards loss of income to the family members. Further, the Tribunal is erred in not awarding any amount under the heads of future medical expenses and mental agony and therefore, under the head of future medical expenses, the Tribunal ought to have awarded Rs.1,00,000/- and under the head of mental agony, the Tribunal ought to have awarded Rs.30,000/-. The Tribunal ought to have awarded a sum of Rs.3,00,000/- towards permanent disability and a sum of Rs.6,00,000/- towards loss of earning power. Hence, this appeal has been filed seeking enhancement of compensation awarded by the Tribunal from Rs.2,35,000/-.

4. The learned counsel for the second respondent would mainly contend that the Tribunal, after considering the entire evidence adduced on either side, awarded just compensation and there is no illegality or infirmity in the award passed by the Tribunal and hence, the award passed by the Tribunal has to be confirmed and the appeal has to be dismissed.

5. This Court heard the arguments made by the learned counsel on either side and perused the entire records.

6. In this case, the appellant/claimant has produced discharge summaries issued by the Apollo Hospital which were marked as Exs.P.2 to P.4 and she has also produced the pay slip which was marked as Ex.P.6. On the side of the appellant/claimant, the claimant herself was examined as P.W.1 and Doctor was examined as P.W.2. The Doctor-P.W.2 assessed the disability suffered by the claimant at 55% and issued the disability certificate which was marked as Ex.P.12. As per Ex.P.2-discharge summary produced on the side of the claimant, the claimant sustained fracture of pelvic bone as well right ankle and right ankle open reduction was done and for pelvis, external fixator was fixed.

7. Considering the period of treatment taken by the petitioner, appropriate amount for loss of income has to be awarded to the claimant. Hence, this Court is of the considered view that the compensation awarded by the Tribunal is enhanced as follows:-

Sl. Nos.	Heads	Amount awarded by the Tribunal	Amount granted by this Court
1.	Future damages	Rs. 1,00,000/-	Rs.1,25,000/-
2	Pain and sufferings	Rs. 50,000/-	Rs. 60,000/-
3.	Medical expenses	Rs. 10,000/-	Rs. 20,000/-
4.	Probable premium and other expenses	Rs. 15,000/-	Rs. 20,000/-
5.	Loss of earning during the period of treatment	Rs. 40,000/-	Rs. 50,000/-
6.	Transport and other expenses	Rs. 10,000/-	Rs. 15,000/-
7.	Attender charges during the period of treatment	Rs. 10,000/-	Rs. 10,000/-
	Total	Rs. 2,35,000/-	Rs.3,00,000/-

8. Considering the above, this Court is of the considered view that the compensation awarded by the Tribunal is enhanced to Rs.3,00,000/- from Rs.2,35,000/-.

9. In the result, the civil miscellaneous appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.3,00,000/- from Rs.2,35,000/-. The interest awarded by the Tribunal at 7.5% stands confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

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To

Sub Assistant Registrar

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.I, Chennai.

+1cc to M/s.R.Sreevidhya, Advocate, S.R.No.69992

+1cc to Mr.K.V.Muthu Visakan, Advocate, S.R.No.69805

C.M.A.No.2334 of 2013

NM (CO)

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CA(03/01/2017)