

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.03.2017
CORAM
THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA
C.M.A. No.813 of 2017

G.Dakshinamurthy

...Appellant/Claimant

vs

1. A.Ravi

2. ICICI Lombard General Insurance Co.Ltd,
No.84, Arihant Plaza,
Wall Tax Road,
Chennai 600 003

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2014 made in MCOP No. 172 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee.

For Appellant : Mr.K.Suryanarayanan

For Respondent-2: Mrs.R.Sreevidhya
R1 : Given up

JUDGMENT

This appeal is preferred by the claimant against the award of compensation for the injury sustained by him in a road accident.

2. The accident occurred on 24.10.2011 while the deceased was riding a motor cycle from Poonamallee to Chennai and was waiting for signal in Velappanchavadi, a lorry bearing registration No.TN-20-AL-6988, driven in a rash and negligent manner, hit the motorcycle and thereby caused grievous injuries on the claimant. As a result of the accident, the claimant suffered Grade III-B both bone fracture on the left leg with dislocation of the MTP joint left foot. For the injuries he suffered, he made a claim for Rs.13,20,000/-, which was restricted to Rs.7,00,000/- before the Tribunal, as against which, the Tribunal has awarded Rs.4,41,384/- payable with interest 7.5% interest per annum on the following heads:

Heads	Amount (in Rs.)
Partial Permanent Disability 2,000 x 55	Rs. 1,10,000/-
Medical expenses	Rs. 2,66,384/-
Loss of pain and sufferings, Nutritious food and transportation expenses	Rs. 25,000/-
Loss of earnings	Rs. 40,000/-
Total	Rs. 4,41,384/-

3. Heard the learned counsel for the appellant-claimant and the learned counsel for the second respondent-Insurance Company and perused the materials available on record.

4. While assessing compensation, the Tribunal has relied on the evidence of PW.2, the Doctor, who assessed the claimant's disability at 55% as partial permanent disability as well as Ex.P.9, the certificate issued by him. Hence, the Tribunal had awarded Rs.1,10,000/- at the rate of Rs.2,000/- for each percentage of disability. However, this Court felt that Rs.3,000/- would be appropriate for each percentage of disability and accordingly enhanced the compensation under the head "partial permanent disability" at Rs.1,65,000/- (55 x 3000). Under the head "loss of pain and sufferings", "nutritious food" and "transportation charges", the Tribunal had awarded only Rs.25,000/-, which is now enhanced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.2,66,384/- for the medical expenses based on the medical bills which were produced under Ex.P.5, which is not disturbed by this Court. So far as the loss of income is concerned, it is stated that the injured was working as a building contractor and was earning Rs 15,000/- per month. However, there is no documentary evidence to prove the same. In the absence of any evidence regarding the income/salary of the appellant, the Tribunal has rightly fixed the monthly income at Rs.10,000/- and awarded Rs.40,000/- towards the loss of income for four months. So, in all, the total compensation is enhanced to Rs.5,21,384/- and the same is tabulated below:

Heads	Amount (in Rs.)
Partial Permanent Disability 3000 x 55	1,65,000/-
Medical expenses	2,66,384/-
Loss of pain and sufferings, Nutritious Food and travelling expenses	50,000/-
loss of income for four months	40,000/-
Total	5,21,384/-

5. On going through the papers, it is seen that there was a re-representation delay of 134 days in filing the appeal. The appellant is not entitled to any interest for the said period.

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal is enhanced from Rs.4,41,384/- to Rs.5,21,384/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment and the appellant/claimant is not entitled to any interest for the said period of re-representation of the appeal papers. The second respondent-Insurance Company is directed to deposit the amount within a period of four weeks from the date of receipt of a copy of this judgment and the claimant is entitled to withdraw the same forthwith. The claimant is directed to pay the necessary Court fee, if any for the enhanced portion of the award amount. No costs.

-s/d-

Assistant Registrar(CsVI)

True Copy

Sub-Assistant Registrar

srn

To

1. The Motor Accident Claims Tribunal
(III Additional District Judge), Poonamallee.

+1 cc to Mr.K.Suryanarayanan Advocate sr 17677
+1 cc to Mrs.R.Sreevidhya Advocate sr 18445

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