

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1527 of 2009
and
C.M.P.No.1302 of 2017

P.Venkatachalapathy ... Appellant/Petitioner

Vs.

1. V.Srinivasan
2. The National Insurance Co. Ltd.,
751, III-Floor,
Anna Salai, Chennai-2. ... Respondent/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.12.2005 and made in M.C.O.P.No.533 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Judge (Fast Track Court No.5), Tiruvallur.

For Appellant : Mr.R.Ponnusamy
For M/s.Anand & Surya

For 2nd Respondent : Mr.J.Chandran

JUDGMENT

The appellant herein is the claimant in the Tribunal has come forward with this appeal challenging the quantum of compensation awarded.

2. The accident had occurred on 07.05.2004 when the appellant, aged 21 years at the relevant time, and working as turner in a lathe industry, while driving in his motor cycle bearing No.TN-04-V-4215 along Medavakkam - Sholingallur road, an auto belonging to the 1st respondent insured with the 2nd respondent dashed against him. In the said accident the claimant suffered fracture of left frontal bone, shoulder bone as well as one of his fingers. For the said injuries, he moved the Tribunal with a claim of Rs.2,00,000/- and considering the evidence before it, the Tribunal has passed an award for Rs.83,000/-. Contending that the compensation awarded is inadequate, the claimant has moved this Court with the present appeal for enhancement of compensation.

3. The learned counsel for the appellant argued that the fracture that the victim had suffered to his shoulder has affected the movement of his shoulder that it functionally affected his career. Besides fracture his left skull frontal bone has led to loss of memory which combined with the physical injury he had suffered, has affected his livelihood and to bring about a growth in his chosen occupation. Hence, argued the counsel, that the disability suffered by the appellant must be treated as functional disability. He also brought to the notice of this Court that the appellant has filed C.M.P.No.1302 of 2017 for enhancement of compensation on these lines. He added that the Tribunal has not only ignored this aspect, but has also been insensitive in its approach even in awarding compensation on non-pecuniary heads.

4. Per contra, the learned counsel for the 2nd respondent argued that going by the standard of living prevailed at the time of accident, on 2004, the Tribunal has justly valued it.

5. The Tribunal has noticed that the appellant has suffered fracture on the shoulder bone besides fracture of the left frontal bone and it granted Rs.35,000/- towards injuries suffered by the appellant. In fact, PW2 Doctor assessed disability at fixed at 55% and the Tribunal has not offered any reason why and how it arrived at Rs.35,000/- as compensation for the disability.

6. On a careful reading of the evidence on record, more particularly the evidence of PW2 Doctor along with Ext.P-6 discharge summary, this Court does not find any material to find that the nature of disability suffered by the appellant constituted functional disability. However, giving 5% provision to the extent of personal disability assessed by P.W.2 Doctor, this court fixes the same as 50% and at Rs.2,500/- per percentage of disability, the compensation payable on the head of permanent disability is determined at Rs.1,25,000/-. The compensation and other heads are marginally increased and the final break up of compensation determined is as follows:

Heads	Amount awarded (Rs.)
Towards Personal Disability	1,25,000.00
Towards Medical Expenses	6,500.00
Towards pain and suffering	50,000.00

Heads	Amount awarded (Rs.)
Loss of amenities	10,000.00
Towards transportation	5,000.00
Total	1,96,500.00

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation is accordingly increased from Rs.83,000/- to 1,96,500/- and the 2nd respondent is hereby directed to deposit the same less the amount if any, already deposited with interest at 7.5% p.a., within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the same forthwith. The learned counsel for the appellant has brought to the notice of this Court that this appeal has been filed with a delay of 501 days which was condoned. The appellant would not be entitled to any interest for the delay period. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn

To:

1. The Motor Accident Claims Tribunal
Additional District Judge(Fast Track Court No.5),
Tiruvallur.

+1cc to M/s.Anand & Surya Advocates sr.55488

+1cc to Mr.Chandran, Advocate sr.55845

C.M.A.No.1527 of 2009 and
C.M.P.No.1302 of 2017

mg(co)
ss(28/10/2017)