

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2204 of 2010

A.Rajasekar

... Appellant/Petitioner

Vs.

1. S.Sivakumar

2. The New India Assurance Co. Ltd.,
45, II Lane Beach Road,
Moors Road,
Chennai - 600 001.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation amount awarded in the judgment and decree dated 25.08.2009 made in MCOP. No.4379 of 2004 on the file of the Motor Accident Claims Tribunal / V Small Causes Court, Chennai.

For Appellant : Mr.Manokaran

For Respondents : Ms.C.Sangamithirai [for R2]

JUDGMENT

The claimant, the practicing Advocate has come forward with this appeal seeking enhancement of compensation awarded to him in MCOP.No.4379 of 2004 on the file of the Motor Accidents Claims Tribunal, Chennai (V Court of Small Causes, Chennai), in connection with a road accident, in which he suffered injuries.

2. On 05.4.2004, while the claimant, an Advocate by profession, was walking along the road, the offending motor cycle hit him, in which he suffered fracture of tibia and fibula in his right leg and multiple fractures all over his body. The claimant was 46 years old at that relevant time and had approached the Tribunal claiming compensation of Rs.3,50,000/-, whereas the Tribunal has passed an award of Rs.1,37,050/- directing the respondents to pay with interest @ 9.5% per annum.

3. The learned counsel for the appellant contended that P.W.2, the doctor has assessed the disability of the claimant at

45% and the Tribunal even though has considered the same on the higher side, has not attempted to determine the extent of disability, but has fixed an arbitrary sum of Rs.40,000/-. In fitness of things, in the absence of any contra evidence, the Tribunal ought to have taken into consideration the percentage of disability as was determined by P.W.2. She added that whereas the claimant had produced necessary documents to prove the total medical expenses incurred by the claimant @ Rs.33,647/- in Ex.P3 & Ex.P4, the Tribunal has passed an award only for Rs.30,050/- towards medical expenses. The Tribunal appears to have ignored Ex.P3 in this regard. P.W.2, the doctor has justified that the plates etc., used to unite the fractured bones have to be removed. Whereas the doctor has stated in his Estimate Certificate [Ex.P12], that a sum of Rs.50,000/- would be required to remove the plates, but, the Tribunal has awarded only Rs.25,000/-. On the head of "pain and suffering", the Tribunal has given a paltry amount of Rs.10,000/- On the head of loss of earning, the Tribunal has granted an award for Rs.5,000/- only for one month and even though one who suffered fracture might have been discharged from hospital, it may not be possible for him to resume practice immediately. He also relied on the following authorities :

- C.Mohanraju Vs. Divisional Manager, United India Assurance Company Limited and another reported in [(2011) 15 SCC 124]
- Syed Sadiq and Others Vs. Divisional Manager, United India Insurance Company Limited reported in [(2014) 2 SCC 735]
- V.Mekala Vs. Malathi and Another reported in [(2014) 11 SCC 178]

4. Per contra, the learned counsel for the insurance company/second respondent herein submitted that the authorities cited to support the arguments for enhancement of compensation may not have application in the instant case, as they essentially deal with a situation of functional disability. The counsel added that the award of the Tribunal is in order and does not call for any interference.

5. There is a point in what the learned counsel for the insurance company has made. The appellant has suffered fracture to his tibia and fibula, and given the nature of his avocation as a lawyer, it may not fundamentally disable him to pursue his career as a lawyer. However, the Tribunal has appeared to have fixed Rs.40,000/- towards compensation for disability without reference to the evidence of P.W.2, the doctor. Taking into consideration, this Court desires to fix compensation at Rs.45,000/- on this head, which implies that there would be an enhancement of Rs.5,000/-. Towards compensation for pain and suffering, given the nature of injury

that the appellant had suffered, it would be befitting to enhance the compensation from Rs.10,000/- to Rs.20,000/-. In all, there will be an increase of Rs.15,000/- to the compensation already awarded by the Tribunal.

6. Therefore, the sum of Rs.1,37,050/- awarded by the Tribunal as compensation is modified, and respondents 1 and 2 are directed to deposit a sum of Rs.1,52,050/- (Rupees One Lakh Fifty Two Thousand and Fifty only) as revised compensation. Interest awarded by the Tribunal at 9.5% per annum from the date of filing the petition till the date of deposit along with proportionate costs is confirmed. Break-up details of the compensation awarded by the Tribunal and revised award are tabulated below:

Sl. No.	Heads	Compensation awarded by the Tribunal	Revised award of this Court
1.	Loss of earning @ Rs.5,000/- x 5 months	25,000.00	25,000.00
2.	Transport to Hospital	2,000.00	2,000.00
3.	Extra nourishment	2,000.00	2,000.00
4.	Medical Expenses	30,050.00	30,050.00
5.	Attendant charges	3000.00	3000.00
6.	Future Medical Expenses	25,000.00	25,000.00
7.	Pain and Suffering	10,000.00	20,000.00
8.	Permanent disability	40,000.00	45,000.00
Total :		1,37,050.00	1,52,050.00

7. The Civil Miscellaneous Appeal is partly allowed without costs. The Insurance Company is directed to deposit the revised award amount with interest, less any amount already deposited, as fixed by this Court within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judge,
The Motor Accident Claims Tribunal
V Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court, Chennai.

CMA.No.2204 of 2010

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