

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.273 of 2010

V.Dakshinamoorthy @ Dakshina

.. Appellant

vs.

1.K.lakshmi Kumar

(Remained exparte before the Trial Cour)

2.National Insurance Co., Ltd.,

No.751, Anna Salai,

Chennai 600 002.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 19.10.2009 made in M.C.O.P.No.1680 of 2005 on the file of the Motor Accident Claims Tribunal (V Small Causes Court) Chennai.

For Appellant

: Mr.N.M.Muthuraja

For R2

: Ms.N.B.Surekha

JUDGMENT

This appeal is preferred by the appellant/claimant for enhancement of compensation awarded by the Tribunal.

2. The appellant/claimant filed a claim petition in MCOP.No.1680 of 2005 for the injuries sustained by him in the accident that took place on 07.03.2005 at about 14.45 hours. While the appellant was walking along Ramakrishna Mutt road from north to south direction, the first respondent, who was riding in his two wheeler bearing Reg.No.TN.04 F 6818 in a rash and negligent manner, hit against the appellant, due to which, the appellant sustained grievous injuries. The accident occurred only due to the rash and negligent driving of the first respondent. The first respondent is the owner of the vehicle and the vehicle was insured with the second respondent. Therefore, both the respondents 1 and 2 are liable to pay the compensation. Thus the claimant filed claim petition claiming a sum of Rs.6,50,000/- as compensation.

3. The first respondent remained exparte before the Tribunal. The second respondent filed a counter statement and denied all the averments made in the claim petition. It is

stated that the appellant has to prove his age, income, place, date and time of the accident, injuries, sustained by him, period of treatment, expenses incurred and the manner in which the accident had occurred and that the rider of the vehicle had valid license which is insured with the second respondent. In any event, the claim of compensation is excessive and prayed for dismissal.

4. Before the Tribunal, the claimant examined himself as P.W.1 and Dr.K.J.Mathiazhagan, was examined as P.W.2 and nine documents were marked as Exs.P.1 to P.9 on the side of the appellant. Neither witness was examined nor document was marked on the side of the respondents.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the first respondent's vehicle. Therefore, the respondent is liable to pay compensation to the appellant. The Tribunal has fixed the disability of the claimant at 45% and awarded a sum of Rs.45,000/- towards permanent disability. Along with conventional damages, the Tribunal awarded a sum of Rs.1,28,250/- as compensation.

6. Not satisfied with the compensation awarded by the Tribunal, the appellant/claimant is before this Court by way of this appeal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused all the materials available on record.

8. The only issue in the appeal is whether compensation awarded is meager or just compensation.

9. It is seen from the records that the Tribunal has accepted the evidence of P.W.1 and 2 and the percentage of disability based on Ex.P.9-disability certificate issued by P.W.2-Doctor. The respondents have not let in any contra evidence to disprove the percentage of disability sustained by the appellant. Taking into consideration, the Tribunal has awarded a sum of Rs.1,000/- per percentage of disability and awarded a sum of Rs.45,000/- $(45\% \times \text{Rs.1,000/-} = \text{Rs.45,000/-})$ towards permanent disability. The said amount awarded towards permanent disability seems to be meager and the same is enhanced to Rs.67,000/- by awarding Rs.1,500/- per percentage of disability.

10. Taking into consideration, the fact that the appellant

has taken treatment only for 7 days and he has not filed any document to prove the loss of earning capacity, the appellant is not entitled any amount for loss of earning capacity. The Tribunal awarded Rs.2,000/- towards extra nourishment, which sum is on the lower side. Hence this court hereby enhances the same to Rs.10,000/-. The amount awarded under other heads are reasonable and therefore, they are confirmed. Thus the amount awarded by the Tribunal is enhanced to Rs.1,58,750/-, break up as follows:

Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Permanent disability	45,000/-	67,500/-	enhanced
Loss of income	15,000/-	15,000/-	Confirmed
Pain and sufferings	10,000/-	10,000/-	confirmed
Extra nourishment	2,000/-	10,000/-	enhanced
Transport to Hospital	2,000/-	2,000/-	confirmed
Damage to clothes	500/-	500/-	confirmed
Medical Expenses	50,750/-	50,750/-	confirmed
Attender Charges	3,000/-	3,000/-	confirmed
Total	1,28,250/-	1,58,750/-	By enhancing a sum of Rs.30,500/-

11. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,28,250/- (Rupees one lakh twenty eight thousand two hundred and fifty only) to a sum of Rs.1,58,750/- (Rupees one lakh fifty eight thousand seven hundred and fifty only) along with interest at the rate of 7.5% per annum from the date of petition till date of deposit and proportionate costs;

(ii) The appellant/claimant is directed to submit his Savings Bank Account Detail along with the copy of his passbook to the Tribunal forthwith;

(iii) The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.1680 of 2005, on the file of the Motor Accident Claims Tribunal (V Small Causes Court) Chennai, within a period of twelve weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the enhanced award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant/claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks thereafter; and

(v) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

The Motor Accident Claims Tribunal
(V Small Causes Court) Chennai.

+lcc to Mr.N.M.Muthurajan, Advocate, S.R.No.19641

+lcc to Mr.N.B.Surekha, Advocate, S.R.No.19735

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C.M.A.No.273 of 2010

PA (CO)

RS (02/06/2017)

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