

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2114 of 2011

B.Suresh Babu

... Appellant/Respondent

..Vs..

1.C.Kavitha

(First Respondent was set Ex-party in the trial Court)

2.National Insurance Company Limited

No.66, Greams Road,

Nungambakkam,

Chennai 34.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 13.09.2010 in M.C.O.P.No.3698 of 2007 on the file of IV Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : Mrs.K.Saraswathi for R2
R1-Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.3698 of 2007 on the file of the IV Judge, Court of Small Causes, Chennai. He filed a claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 10.07.2007.

2.The brief case of the appellant/claimant is as follows:

On 10.07.2007, the appellant was driving his two wheeler Kinetic Honda bearing Registration No.TN 05 B 2606 along Paper Mills Road, Opposite to Peravallur Bus Stop, Chennai. At about 5.30 a.m., a speeding Ambassador Car bearing Registration No.TN 49 R 8070 belonging to the first respondent hit the two wheeler, as a result of which, the appellant/claimant sustained grievous injuries.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the Ambassador Car bearing Registration No. TN 49 R 8070 belonging to the first respondent was the cause of the accident and that since the first respondent has insured his vehicle with the second respondent National Insurance Company Limited, Nungambakkam, Chennai-34, both of them are jointly and severally liable to pay compensation to him.

4. In the tribunal, the first respondent remained absent and therefore, he was set ex-parte. The Insurance Company contested the claim petition by filing a counter. The learned IV Judge, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.1,61,500/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of compensation.

5. Mr. K.V. Muthu Visakan, learned counsel appearing for the appellant contended that the appellant/claimant had sustained Right Knee Ligament injury with depressed fracture of Lateral Tibial Condyle and that an operation was performed on 12.07.2007. He also drew the attention of this Court to the discharge summary (Ex.P3) issued by Kumaran Hospital Private Limited and contended that four screws were fixed on the bones and that during the year 2009, the appellant/claimant underwent another operation for removal of those four screws. He would contend that as per the discharge summary (Ex.P4), only three screws were removed and despite of various attempts for a long time, one screw could not be removed by the doctor. According to him, the appellant/claimant is still undergoing treatment.

6. A perusal of the discharge summary (Ex.P3) shows that the following procedure was done on 12.07.2007:

"The lateral compartment muscles erased naturally from proximal tibia # fragment identified and opened out. The depression was reduced bone grafts from (Rt) iliac went were passed T button male with 3 pros cancellors screws (75mm (2) 55mm(1) and 3 cortical distal screws 32mm) lateral meniscus tear was repaired wound close with drain.

Dr. Saichandran has assessed the partial permanent disability as 40%. However, the tribunal without assigning any reasons, reduced the percentage to 30%.

7.The learned counsel appearing for the appellant would contend that the Tribunal did not award any amount towards Attender's Charges and loss of income is calculated only for three months. Dr.Saichandran (Ex.P3) in his evidence, clearly stated that the restriction of movement of the Right Leg was reduced by 30 degrees and bone grafting was also done on the appellant/claimant.

8.In the circumstances, the permanent disability assessed by the doctor as 40% is taken up for calculating partial permanent disability suffered by the appellant/claimant. The appellant/claimant was a supplier of building materials on the date of the accident. Therefore, there is no functional disability warranting adoption of multiplier method.

9. Awarding a sum of Rs.2,000/- per percentage in the considered opinion of this Court would meet the ends of Justice and thus a sum of Rs.80,000/- is awarded towards partial permanent disability and apart from this, a sum of Rs.2,000/- is awarded towards Attender's charges. As far as the other heads are concerned, the tribunal had considered all the aspects. The compensation awarded by the tribunal and the enhancement of compensation by this Court under various heads are extracted here under:

S.No	Head	Amount granted by the tribunal	Amount Awarded by this Court
1.	Loss of Income	Rs.13,500/-	Rs.13,500/-
2.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
4.	Damage to clothing	Rs.1,000/-	Rs.1,000/-
5.	Medical expenses	Rs.32,000/-	Rs.32,000/-
6.	Future Medical Expenses	Rs.20,000/-	Rs.20,000/-
7.	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-
8.	Permanent disability	Rs.60,000/-	Rs.80,000/-
9.	Attender's Charges	Nil	Rs.2,000/-
Total		Rs.1,61,500/-	Rs.1,83,500/-

10.It is brought to the notice of this Court that the entire award amount was already deposited by the Insurance

Company and the same was withdrawn by the appellant/claimant. Therefore, the Insurance company is directed to deposit the enhanced compensation of Rs.22,000/- (Rs.1,83,500/- - Rs.1,61,500/-) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.3698 of 2007 and on such deposit being made, the appellant/claimant is at liberty to withdraw the same after following due procedure of law.

11.With the above observations, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vkr/mbi

To

The IV Court(Court of Small Causes), Chennai.

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.No.89282

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.88591

C.M.A.No.2114 of 2011

KJ(CO)
GMY(27/02/2019)

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