

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1983 of 2015

Mani

...Appellant/Petitioner

Vs

1. M/s.Mohan Breweries and Distilleries,
Mettupalayam,
Pondicherry.

2. HDFC ERGO General Insurance Co. Ltd.,
Old No.559, N.No.528, II Floor, Anna Salai,
Teynampet, Chennai-600 018.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment dated 19.11.2014 made in M.C.O.P.No.2054 of 2011 on the file of the Motor Accidents Claims Tribunal (V Judge, Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents: Mr.N.Vijayaraghavan (for R2)
No Appearance (for R1)

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.2,35,000/- awarded by the Tribunal for the injuries sustained by him in the accident, the appellant has preferred the Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellant is the claimant and he filed the claim petition claiming compensation of Rs.7,20,000/- for the injuries sustained by him in the accident occurred on 11.02.2011.

3. I heard Mr.K.Varadha Kamaraj, learned counsel for the appellant and Mr.N.Vijayaraghavan, learned counsel for the second respondent.

4. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the second respondent is liable to pay the compensation to the appellant. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation is confirmed.

5. The only point that arises for consideration in this appeal is whether the appellant is entitled to get enhanced compensation and if so, to what extent.

6. The case of the appellant is that on 11.2.2011 at about 21.00 hours, he was walking at C.P.Ramasamy Road near Punjab National Bank. At that time, a car bearing registration No.PY-01 BA 0797 driven by its driver in a rash and negligent manner dashed against him. Due to the impact, the appellant sustained right leg both bone Grade III compound fracture and also multiple injuries all over the body. Immediately, after the accident, he was admitted in Government Royapettah Hospital, Chennai.

7. Ex.P2 is the discharge summary issued by the Government Royapettah Hospital, Chennai, where from it is seen that the appellant had sustained Grade III compound fracture of both bone right leg and was treated as inpatient from 11.02.2011 to 21.02.2011. During treatment, he underwent surgery on 11.02.2011 thereby external fixation was done. It is seen that once again, the appellant was admitted in the same hospital as inpatient on 18.04.2011 and discharged on 21.04.2011 thereby external fixation was removed, which would be evident from Ex.P3-discharge summary. According to the petitioner, thereafter, he continued his treatment as outpatient.

8. P.W.2-Doctor, examined the appellant and issued Ex.P7-disability certificate assessing the disability at 45%. Since the injury sustained by the appellant is not schedule injury, the Tribunal has taken the disability at 40% holding that the assessment made by P.W.2-Doctor is slightly on the higher side. The said view taken by the Tribunal warrants no interference. Taking the disability at 40%, the Tribunal awarded Rs.80,000/- for disability.

9. The learned counsel for the appellant argued that since the appellant had sustained Grade III compound fracture of both bone right leg, the Tribunal ought to have awarded more amount by adopting multiplier method.

10. As stated supra, since the injury sustained by the appellant is not schedule injury, the Tribunal was right in awarding the amount towards disability by percentage method. However, Rs.2,000/- percentage taken by the Tribunal is on the lower side and the same needs enhancement.

11. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, this Court has considered Rs.3,000/- per percentage of disability. Following the decision in National Insurance Company Ltd. v. G.Ramesh, supra, this Court is inclined to grant Rs.3,000/- per percentage of disability. Taking the disability at 40%, an amount of Rs.1,20,000/- is awarded towards disability as against Rs.80,000/- awarded by the Tribunal.

12. The Tribunal awarded Rs.45,000/- towards loss of income by taking the monthly income at Rs.7,500/-. Considering the age of the appellant and also the avocation, he would have earned atleast Rs.10,000/- per month. Due to fracture of both bone and external fixation and its removal, the appellant would not be able to go to work atleast for six months. Therefore, a sum of Rs.60,000/- is awarded towards loss of income as against Rs.45,000/- awarded by the Tribunal.

13. The Tribunal awarded Rs.40,000/- towards pain and suffering. Considering the nature of injuries and also the period of treatment undergone by the appellant, Rs.40,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.50,000/-.

14. The Tribunal awarded Rs.25,000/- towards loss of amenities. In the present case, the appellant sustained Grade III compound fracture of both bone right leg and had taken treatment as inpatient for 11 days and during treatment, a surgery was performed thereby external fixation was done. Again he was admitted in the hospital for removal of external fixation and the appellant had taken treatment for nearly 8 days on the second spell.

15. Qua awarding of compensation under the head loss of amenities, in a catena of decisions, the Hon'ble Supreme Court held that a person not only suffers injuries on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned.

16. Considering the nature of injuries sustained by the appellant and the treatment undergone by him and also

considering his age, this Court inclined to award Rs.50,000/- towards loss of amenities as against Rs.25,000/- awarded by the Tribunal.

17. The Tribunal awarded Rs.40,000/- towards transportation, extra-nourishment and other miscellaneous expenses. Considering the nature of injuries and the period of treatment undergone by the appellant, Rs.40,000/- awarded by the Tribunal is enhanced to Rs.50,000/- for transport charges and extra-nourishment.

18. The Tribunal awarded Rs.5,000/- towards medical expenses. Though the injury sustained by the appellant is not schedule injury, taking note of the fact that the injury sustained by him is grievous in nature and also during treatment, he would have incurred medical expenses, this Court is inclined to award Rs.10,000/- towards medical expenses as against Rs.5,000/- awarded by the Tribunal.

19. The Tribunal has not awarded any amount towards attender charges. As stated supra, the appellant had taken treatment as inpatient on two spells and the same has been proved by way of documentary evidence. Considering the period of treatment undergone by the appellant and also the fact that the appellant would have been taken care of by the attender during the period of treatment, this Court is inclined to award Rs.15,000/- towards attender charges.

20. In view of the above discussion, a sum of Rs.2,35,000/- awarded by the Tribunal is enhanced to Rs.3,55,000/- as under:

Heads	Rs.
Disability	1,20,000.00
Loss of income	60,000.00
Pain and suffering	50,000.00
Loss of amenities	50,000.00
Medical expenses	10,000.00
Attender charges	15,000.00
Transport charges and extra-nourishment	50,000.00
Total	3,55,000.00

21. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.2,35,000/- awarded by the Tribunal is enhanced to Rs.3,55,000/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The second respondent is directed to deposit

the modified compensation with interest as aforesaid before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application before the Tribunal.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
V Small Causes Court,
Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1CC to M/s.Varadha Kamaraj, Advocate, SR.NO.68421

C.M.A.No.1983 of 2015

cnr(CO)
kak(08/03/2019)