

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2486 of 2018

Kannan

.. Appellant

Vs.

1.V.Swaminathan  
(R1 was set exparte in Trial Court and  
hence, his presence may be dispensed with)

2.The National Insurance Company Limited,  
Third Party Cell HUB, No.751, Anna Salai,  
Chennai - 600 002.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.08.2017 made in M.A.C.T.O.P.No.3047 of 2014 on the file of the Motor Accidents Claims Tribunal/ IV Small Causes Court, Chennai.

For Appellant : Ms.M.Malar

For R1 : Exparte before the Tribunal

For R2 : Mr.D.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 08.08.2017 made in M.A.C.T.O.P.No.3047 of 2014 on the file of the Motor Accidents Claims Tribunal/IV Small Causes Court, Chennai.

2.By consent of both parties, this appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.A.C.T.O.P.No.3047 of 2014, on the file of the Motor Accidents Claims Tribunal/ IV Small Causes Court, Chennai. He filed the above claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.05.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place due to the rash and negligent driving by the driver of the car belonging to the first respondent and directed the second respondent to pay a sum of Rs.1,00,200/- as compensation to the appellant.

5.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of the same.

6.The learned counsel appearing for the appellant contended that P.W.3/Dr.J.R.R.Thiagarajan has certified that the appellant has suffered 30% disability, but the Tribunal has reduced the same to 20% and the reason given by the Tribunal is not correct. The appellant was taking treatment in Government Hospital, Royapettah, from 05.05.2014 i.e., from the date of accident till filing of the claim petition and the amount awarded towards attendant charges has to be enhanced. The amounts awarded under the different heads are meager and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent contended that appellant took treatment in Government Hospital, Royapettah, for one day and the amount granted by the Tribunal is proper. The Tribunal has given valid reason for reducing the percentage of disability from 30% to 20% and the same is proper. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel for the appellant as well as the second respondent and perused the materials available on record.

9.From the materials on record, it is seen that P.W.3/Dr.J.R.R.Thiagarajan has certified the disability of the appellant as 30%, but the Tribunal has reduced it to 20% on the ground that P.W.3 has not filed the worksheet and medical guidelines. The said reasoning is erroneous. The second respondent has not let in any evidence to dis-prove the evidence of P.W.3/Doctor with regard to 30% disability. In such circumstances, the appellant is entitled to compensation for 30% of disability. Hence, the amount awarded by the Tribunal under the head 'disability' is enhanced to Rs.90,000/- (Rs.3,000X 30%).

The appellant was aged 69 years at the time of accident and he would have suffered more pain and suffering due to his age. Therefore, a sum of Rs.20,000/- granted towards pain and suffering by the Tribunal is enhanced to Rs.30,000/-. A sum of Rs.2,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads are not meager and there is no reason for enhancement of the same and therefore, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description                 | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|-----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Disability (Rs.3,000 X 30%) | 60,000                          | 90,000                            | enhanced                               |
| 2.   | Pain and suffering          | 20,000                          | 30,000                            | enhanced                               |
| 3.   | Extra nourishment           | 2,000                           | 10,000                            | enhanced                               |
| 4.   | Transportation              | 2,000                           | 2,000                             | confirmed                              |
| 5.   | Damages to clothes          | 500                             | 500                               | confirmed                              |
| 6.   | Attendant charges           | 200                             | 200                               | confirmed                              |
| 7.   | Medical expenses            | 5,000                           | 5,000                             | confirmed                              |
| 8.   | Future Medical expenses     | 2,000                           | 2,000                             | confirmed                              |
| 9.   | Loss of income              | 6,500                           | 6,500                             | Confirmed                              |
| 10.  | Loss of amenities           | 2,000                           | 2,000                             | Confirmed                              |
|      | Total                       | 1,00,200                        | 1,48,200                          | Enhanced by Rs.48,000/-                |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal of Rs.1,00,200/- is hereby enhanced to Rs.1,48,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk/kj

To

The Motor Accidents Claims Tribunal  
(IV Small Causes Court Judge), Chennai.

+1 cc to M/s.M.Malar, Advocate, S.R.No.77573

+1 cc to Mr.D.Bhaskaran, Advocate, S.R.No.77553

C.M.A.No.2486 of 2018

SPD(CO)  
SSM(09/01/2019)

सत्यमेव जयते

WEB COPY