

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2465 of 2018

Prabakaran

... Appellant/Petitioner

Vs

1.G.Senthilkumar

2.National Insurance Company Limited,
Branch Office No.II, Jerome Building,
1st Floor, Fort Station Road,
Trichy - 620 002.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 09.03.2015 passed in M.C.O.P.No.386 of 2012 by the Motor Accidents Claims Tribunal (Sub Court), Rasipuram.

For Appellant : Mr.SP.Yuaraj

For Respondents: Mr.J.Chandran
for 2nd respondent

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.3,33,300/- awarded by the Tribunal for the injuries sustained by him in the accident, the appellant has preferred the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellant is the claimant and he filed the claim petition claiming compensation of Rs.25,00,000/- for the injuries sustained by him in the accident occurred on 28.08.2012.

3. I heard Mr.SP.Yuaraj, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the 2nd 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. According to the appellant, on 28.8.2012 at about 5.00 AM while he was travelling as passenger in a Omni bus bearing registration No.TN-45 AS 1802 on Chennai-Trichy Main road, the driver of the bus drove the same in a rash and negligent manner and dashed behind a Omni bus bearing registration No.TN-01 U 4984, which was parked due to puncher at near Naranamangalam Petrol Bunk and caused the accident. Due to the impact, he had sustained (i) distal 1/3rd junction fracture right femur without outside sutured wound lower thigh; (ii) closed shaft femur fracture left side proximal 1/3rd - 1/3rd middle junction. Immediately, after the accident, he was admitted in Government Hospital, Perambalur, where from he was taken to Atlas Hospital, Trichy and thereafter, for better treatment, he was admitted at Ganga Hospital, Covai, where he had taken treatment as inpatient and discharged on 12.09.2012. According to the appellant, till he is taking treatment as outpatient in the said hospital. As far as injuries sustained by the appellant and the treatment taken by him have been proved by way of Ex.P6-discharge summary issued by the Ganga Hospital, Covai.

7. P.W.2-Doctor, examined the appellant and assessed the disability at 48%. However, the Tribunal had taken the disability at 35% and awarded Rs.70,000/- towards disability by taking Rs.2,000/- per percentage of disability. Considering the fact that the appellant had sustained fracture over the right hip, distal 1/3rd right femur with outside sutured and wound thigh, closed shaft femur fracture left side proximal and rod was fixed in the right thigh, which was affected is normal life, this Court feels that a sum of Rs.70,000/- awarded by the Tribunal towards disability is on the lower side.

8. The learned counsel for the appellant argued that since the appellant had sustained 48% disability, the Tribunal ought to have applied multiplier method to compute just compensation. Considering the nature of injuries and also disablement suffered by the appellant, this is not a fit case to adopt multiplier

method.

9. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, the Hon'ble Apex Court has considered Rs.3,000/- per percentage of disability. Following the decision of the Apex Court in National Insurance Company Ltd. v. G.Ramesh, supra, this Court is inclined to take Rs.3,000/- per percentage of disability. Taking the disability at 48%, an amount of Rs.70,000/- awarded by the Tribunal is enhanced to Rs.1,44,000/- towards disability.

10. The Tribunal awarded Rs.36,000/- towards loss of income for a period of three months. At the time of accident, the appellant was aged 29 years and was working as Software Engineer. Though the appellant contended that he was earning Rs.26,000/- per month, nothing has been produced. In the absence of proof, the Tribunal has taken the monthly income of the appellant at Rs.12,000/-, which in my considered opinion is reasonable. However, due to the injuries sustained by him in the accident, the appellant would have lost his income for atleast five months. Therefore, it would be appropriate and reasonable to award five months salary i.e., Rs.60,000/- (Rs.12,000 x 5) towards loss of income.

11. The Tribunal has awarded Rs.30,000/- for pain and suffering; Rs.15,000/- for transportation; Rs.20,000/- for extra-nourishment and Rs.20,000/- for loss of amenities. Considering the nature of injuries and also the period of treatment undergone by the appellant, Rs.30,000/- awarded by the Tribunal for pain and suffering is enhanced to Rs.50,000/-; Rs.15,000/- awarded by the Tribunal for transportation is enhanced to Rs.20,000/-; Rs.20,000/- awarded by the Tribunal for extra-nourishment is enhanced to Rs.25,000/- and Rs.20,000/- awarded by the Tribunal for loss of amenities is enhanced to Rs.35,000/-.

12. The Tribunal has not awarded any amount towards attender charges. As stated supra, the appellant had taken treatment from 28.08.2012 to 12.09.2012 at various hospitals 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.20,000/- towards attender charges.

13. As far as medical expenses are concerned, the Tribunal

awarded Rs.1,42,300/- towards medical expenses. To prove the medical expenses, the appellant has produced Ex.P5-medical bills. Since Rs.1,42,300/- awarded by the Tribunal is the actual expenses incurred by the appellant, the same is confirmed.

14. The Tribunal has not awarded any amount towards future medical expenses. Considering the nature of injuries sustained by the appellant and also the future treatment required to be taken by him, this Court deem it appropriate to award a sum of Rs.75,000/- towards future medical expenses.

15. In view of the above discussion, the total compensation of Rs.3,33,300/- awarded by the Tribunal is enhanced to Rs.5,71,300/- as under:

Heads	Rs.
Disability	1,44,000.00
Medical bills	1,42,300.00
Loss income for 5 months	60,000.00
Pain and suffering	50,000.00
Extra-nourishment	25,000.00
Attender charges	20,000.00
Loss of amenities	35,000.00
Transport charges	20,000.00
Future medical expenses	75,000.00
Total	5,71,300.00

16. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.3,33,300/- awarded by the Tribunal is enhanced to Rs.5,71,300/- 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 entire 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.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal,
Sub-Court, Rasipuram.
2. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.SP.Yuaraj, Advocate SR.No.73852

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AD(CO)
GMY(28/02/2019)



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