

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2211 of 2007

Shanmugham

..Appellant/Claimant

Vs

1. Devamma

2. M/s.HDFC Cubb General
Insurance Company Limited,
6th Floor, Express Towers,
Nariman Point,
Mumbai-400 021.

..Respondents/Respondents

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.06.2006 made in MCOP No.844 of 2004 on the file of the Motor Accidents Claims Tribunal (II Additional Sub Court), Erode.

For Appellant : Mr.Govi Ganesan

For Respondent : No appearance for R1

R2 : Not ready in Notice

JUDGMENT

The case in brief, is as follows:

On 07.08.2004 at about 7.30 p.m., the appellant was walking along with his bicycle on the left side of the NH 47 Road from West to East direction, near Mandaivayal Thottam Pirivu, Vijayamangalam, Perundurai Taluk. At that time, the car bearing Reg.No.AP-09-PV-3339 came from the opposite direction in a rash and negligent manner and dashed against the appellant. Due to the said impact, the appellant sustained grievous injuries. The appellant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.38,350/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant -claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that the appellant sustained cervical spinal cord injury and hence the Tribunal ought to have awarded more compensation against the total claim of Rs.2,00,000/- made by the appellant. He also submitted that the Tribunal failed to see that the appellant was in-patient for nearly 18 days and hence the award of a sum of Rs.15,000/- towards pain and suffering is very low.

5.There is no representation for the first respondent, even though the name of the first respondent is printed in the cause list.

6.Heard the learned counsel for the appellant / claimant and perused the materials available on record.

7.The Tribunal has awarded a sum of Rs.15,000/- towards pain and suffering, Rs.22,357.62 towards medical expenses and Rs.1,000/- towards transportation, extra nourishment and damages to bicycle, totalling to Rs.38,357.62, rounded off to Rs.38,350/-.

8.Ex.P8-Discharge summary of K.M.C.H.Hospital shows that the appellant complained of neck pain and there was benumbed sensation of C-5 level on the left side and it was diagnosed as partial cervical spine injury. According to P.W.3-Doctor attached to the Government Hospital, Erode, the x-ray examination of the appellant revealed fracture of the right side 1st rib and it is a grievous injury. It is also seen that after the accident, the appellant is unable to walk steadily and he is having giddiness while walking, and the accident had caused disability to that extent. Taking note of the same, it would be appropriate to award a sum of Rs.20,000/- towards that head. Further, awarding a sum of Rs.5,000/- towards loss of earning during the treatment period and Rs.10,000/- towards future medical expenses, would meet the ends of justice.

9.The details of the modified compensation are as follows:

HEAD	AMOUNT (Rs.)
Pain and suffering	15,000.00
Medical expenses	22,357.62
Transportation, extra nourishment and damages to bicycle	1,000.00
Disability	20,000.00

Loss of earning during the treatment period	5,000.00
Future medical expenses	10,000.00

TOTAL...	73,357.62
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(Rounded off to Rs.73,350/-)

Thus, the appellant / claimant is entitled to the modified compensation of Rs.73,350/- with interest at the rate of 7.5% p.a. from the date of petition.

10.The second respondent Insurance Company is directed to deposit the modified compensation of Rs.73,350/- with interest at 7.5% p.a. from the date of petition, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

11.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
(II Additional Sub Court), Erode.

2.The Section Officer,
VR Section, Madras High Court.

+1 CC to Mr.K. Govi Ganesan, Advocate sr 59967

C.M.A.No.2211 of 2007

MR (CO)
SP (16/10/2019)