

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2580 of 2007

M.Rajendran

...

Appellant

Vs

1.G.Immanuvel

2.The New India Assurance Co.Ltd.,
rep.by its Branch Manager,
No.110, Gandhi Road, Arni.

...

Respondents

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.08.2005 made in MCOP No.18 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Arni.

For Appellant : Mr.P.Seshadri

For Respondents : Mr.R.Balasubramanian for R1
Mr.M.Krishnamoorthy for R2

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.49,800/- towards compensation due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 13.09.2002, when the appellant herein was walking in the Chennai - Bangalore Road near Walaja Town Nagammal Temple, the lorry bearing Reg.No.TMK-9259 belonging to the first respondent herein, came 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 claiming a sum of Rs.1,70,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.49,800/- with interest at the rate of 9% 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 Tribunal has erred in fixing the disability at 25% when the Doctor has assessed the disability at 35% and further, there is no oral or documentary evidence adduced on the side of the respondents to reduce the percentage of disability. He further submitted that the amounts awarded by the Tribunal towards other heads are very low. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence and has correctly awarded the compensation which is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant / claimant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The Tribunal has awarded a sum of Rs.25,000/- towards 25% disability, even though P.W.2-Doctor fixed the disability of the appellant / claimant at 35%. The Tribunal has also awarded a sum of Rs.10,000/- towards grievous injuries, Rs.3,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment, Rs.7,000/- towards loss of earning during the treatment period, Rs.300/- towards X-ray, Rs.2,500/- towards transportation and Rs.10,000/- towards medical expenses based upon Ex.P4-Medical bills. Even though the total compensation worked out to Rs.59,800/-, the Tribunal has awarded only a sum of Rs.49,800/- and it is a calculation error.

8.Considering the facts and circumstances of the case and the materials and evidence available on record, this Court deems it fit to sustain the disability of 35% assessed by the Doctor and it would be appropriate to award a sum of Rs.35,000/- towards this head, at the rate of Rs.1,000/- per percentage of disability. Even though as per Ex.P4-Medical bills, the expenditure towards medical expenses works out to Rs.16,829/-, the Tribunal has awarded a sum of Rs.10,000/-. Hence the amount awarded towards medical expenses stands modified to Rs.16,800/-. The amount awarded by the Tribunal towards pain and suffering is very low. It would be appropriate to award a sum of Rs.20,000/- towards that head. The Tribunal has not awarded any amount towards Attendant Charges. Considering the injuries suffered by

the claimant, he would have required an attendant to look after him, during the treatment period. It would be appropriate to award a sum of Rs.6,500/- towards attender charges. The amounts awarded by the Tribunal towards grievous injuries at Rs.10,000/-, Rs.2,500/- towards transportation, Rs.2,000/- towards extra nourishment, Rs.300/- towards x-ray and Rs.7,000/- towards loss of earning during the treatment period, are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Grievous injuries	10,000/-
Disability (35%)	35,000/-
Pain and suffering	20,000/-
Loss of earning during the treatment period	7,000/-
Medical expenses	16,800/-
Transportation	2,500/-
X-ray	300/-
Extra nourishment	2,000/-
Attendant charges	6,500/-

TOTAL.....	1,00,100/- =====

9. Thus, the claimant is entitled to the modified compensation of Rs.1,00,100/-. It is made clear that only for the compensation of Rs.59,800/- awarded by the Tribunal, the interest rate of 9% per annum shall be calculated from the date of claim petition. For the enhanced amount, ie., Rs.40,300/-, the interest rate of 9% shall be calculated from the date of filing of this appeal.

10. The second respondent Insurance Company is directed to deposit the modified amount of compensation as ordered above, 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 is permitted to withdraw the same, on making proper application before the Tribunal.

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Subordinate Judge, Arni.

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

+lcc to Mr.Satheesh Kumar, Advocate sr.68992

+lcc to Mr.M.Krishnamoorthy, Advocate sr.68995

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