

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2012 of 2008

K.Thiruvengkatasamy

.. Appellant/ Petitioner

Vs.

1. A.Prakash

2. S.Gandhimathi

(R1 and R2 are set exparte before the Tribunal)

3. The New India Assurance Company Limited,

Kongu Complex,

Opposite Bus Stand,

Byepass Road,

Dharapuram 638 657.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.03.2008 made in M.C.O.P.No.497 of 2007, on the file of the Motor Accidents Claims Tribunal, I Additional District Judge of Erode District at Erode.

For Appellant : Mr.A.K.Kumaraswamy

For R3 : Mr.S.Manohar

J U D G M E N T

This appeal arises out of the judgment and decree dated 31.3.2008 passed by the Motor Accidents Claims Tribunal, I Additional District Judge, Erode, in MCOP.No.497 of 2007.

2. According to the appellant/claimant, on 08.05.2007 at about 06.30pm, he was riding his motorcycle from Vallipurathampalayam to Muthampalayam. When he was waiting for the signal at Panneerselvam park, the mini bus bearing registration No.TN33 AE 8998 belonging to the second respondent and insured with the third respondent insurance company came in

a rash and negligent manner and hit the motorcycle from behind. As a result of the same, the appellant sustained grievous injuries, for which, he filed a claim petition, claiming compensation of Rs.5,00,000/-. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.94,865/- with interest at 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so determined, the appellant is before this Court with the present appeal seeking enhancement of the same.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.20,000/- towards 20% permanent disability; the compensation awarded under other heads are also very meagre; and hence, the same has to be enhanced substantially.

4. Per contra, the learned counsel for the third respondent insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The appellant/claimant himself examined as P.W.1, who deposed that in the accident, he had sustained fracture of left knee, besides receiving injuries on the left toe and on the right wrist and shoulder; operation was done for implantation of metal plates in respect of fracture of knee; he was 48 years old and was earning Rs.15,000/- per month by doing chemical business and he is an income tax assessee; and he initially took treatment at Erode KMCH and thereafter, at Coimbatore Ganga Hospital as inpatient from 09.05.2007 till 17.05.2007. The doctor/PW2 has deposed that he assessed the appellant/claimant and issued Ex.P14 disability certificate to the tune of 20%. Ex.P6 is the wound certificate. Exs.P11 and P12 are Income tax returns. Ex.P15 is the X-ray. However, the Tribunal has awarded only Rs.20,000/- towards permanent disability, which appears to be on the lower side, considering the nature of the injuries sustained by the claimant and hence, the same is hereby enhanced to Rs.40,000/- by granting Rs.2,000/- per percentage of disability, besides enhancing the compensation awarded under the head "injuries and pain and suffering" from Rs.15,000/- to Rs.25,000/-.

7. Further, taking note of the gravity of the injuries and the period of treatment taken by the appellant/claimant, this

Court is inclined to award Rs.20,000/- towards loss of income during treatment period and is accordingly awarded. However, there is no modification with regard to the compensation awarded towards extra nourishment and transportation charges and medical bills. Thus, the details of the enhanced compensation are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 20%	20,000/-	40,000/-
Medical bills	52,365/-	52,365/-
Extra Nourishment and transportation	7,500/-	7,500/-
Injuries and Pain and suffering	15,000/-	25,000/-
Loss of Income during the treatment period	----	20,000/-
Total	94,865/-	1,44,865/-

It is made clear that the enhanced sum of Rs.50,000/- shall carry interest at 7.5%pa only from the date of filing of this appeal.

8. In fine, this appeal is partly allowed. The award of the Tribunal is enhanced from Rs.94,865/- to Rs.1,44,865/-. No costs. The third respondent/Insurance Company is directed to deposit the entire compensation amount, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Erode District,
Erode.

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

+1cc to Mr. Mr.S.Manohar, Advocate SR.No. 62275

+1cc to Mr. Mr.A.K.Kumaraswamy, Advocate SR.No. 626021

C.M.A.No.2012 of 2008

A.SK(15/07/2020)