

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1129 of 2013

K.Loganathan

...Appellant/Petitioner

vs.

1. Puttur Narasimha

2. Reliance General Insurance Company Limited,
5th Floor, Centenary Building,
No.28, M.G.Road, Bangalore

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 14.07.2010 passed in MCOP.No.169 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Ranipet.

For Appellant : Mr.C.Prabhakaran

For Respondents : Mr.S.Arunkumar for R2
R1 - Exparte

JUDGMENT

The appellant is the claimant in MCOP.No.169 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Ranipet. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 24.06.2007.

2. The case of the claimant is that on 24.06.2007, he was riding his motorcycle bearing Registration No.TN 23 X 4716 on Chennai - Bangalore bye-pass road and at about 09.45 hours, when he was nearing Ranipet, a speeding car bearing Registration No.KA 02 N 2932, hit him, as a result of which, he fell down and sustained injuries. According to the claimant, the rash and negligent driving of the

driver of the car belonging to the first respondent was the cause of the accident and that since the said car was insured with the Reliance General Insurance Company Limited, the owner and the insurer of the car are jointly and severally liable to pay compensation.

3. The owner of the car remained absent before the Tribunal and therefore, he was set ex-parte. The Reliance General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Ranipet after analysing the evidence on record, awarded a compensation of Rs.74,197/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.C.Prabhakaran, learned counsel appearing for the appellant / claimant contended that though Dr.S.Gopalan (PW2) had assessed the partial permanent disability sustained by the claimant as 70%, the Tribunal had reduced the same to 50% without assigning any valid reason. He would further contend that very meagre amounts were awarded under other heads and therefore prayed for enhancement of compensation.

5. Per contra, Mr.S.Arunkumar, learned counsel appearing for the Reliance General Insurance Company contended that the Tribunal had awarded a just compensation of Rs.74,197/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent.

7. A perusal of records shows that Dr.S.Gopalan (PW2) had assessed the partial permanent disability as 70% and the Tribunal had reduced the same to 50%. It is seen from the discharge summary (Ex.P4) that the claimant had sustained the following injuries :-

- 5 x 3 cm abrasion right knee with 2 x 1 cm fascia deep laceration
- 2 x 1 cm & 2 x 2 cm lacerations over left knee
- 5 x 3 cm superficial abrasion over proximal aspect of right forearm
- 2 x 2 cm superficial abrasion dorsum of right hand
- 2 x 1 cm & 1 x 1 cm abrasion dorsum of left hand
- Undisplaced greater tuberosity fracture, right
- Fracture head of proximal phalanx, right big toe.

Considering the nature of injuries sustained by the claimant, partial permanent disability fixed by the Tribunal at 50% cannot be found fault with. In the claim petition, it is contended that the claimant was doing real estate business, earning a sum of Rs.7,000/- per month. No income proof was adduced by the claimant. Since the accident took place in the year 2007, the notional monthly income is fixed as Rs.4,500/-. On account of the accident, the claimant would not have been in a position to attend to his regular work at least for 3 months and therefore, a sum of Rs.13,500/- (Rs.4,500/- x 3 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.50,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Medical expenses	Rs. 6,197/-
4.	Transportation	Rs.2,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Attender's charges	Rs.1,000/-
7.	Damage to clothes	Rs. 500/-
8.	Loss of Income	Rs.13,500/-
Total		Rs.88,197/-

8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.74,197/- to Rs.88,197/-, which would carry interest at the rate of 7.5% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The 2nd respondent / Reliance General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.88,197/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.169 of 2007 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Ranipet within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant /

claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS-V)

//True Copy//
Sub Assistant Registrar

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To
The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Ranipet.

Copy to:
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.95630
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.95650

CMA.No.1129 of 2013

SSD(CO)
CB(27/08/2020)