

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3858 of 2005

P.Kumaravelu

Appellant / Petitioner

Vs

1. Vishal Surana

2. United India Insurance Co Ltd
Motor III Party Claim Cell No.38
Anna Salai
Chennai - 600 002

Respondents / Respondents

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 17.09.2004 made in MCOP No.253 of 1999 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court No.II, Kancheepuram.

For Appellant : Mr.N.Veerasingam

For Respondent : Mr.D.Baskaran for R2
R1-Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant against the award passed in MCOP No.253 of 1999.

2. The appellant is the claimant, Respondents herein are the respondents before the Tribunal. The 1st respondent is the owner of the vehicle/insurer and the 2nd respondent is the Insurance Company/insured.

3. The case of the claimant/ appellant herein before the Tribunal was that on 28.02.1999, at about 2.30pm, when he was walking on the left side of the GWT Road, a car belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner, hit the appellant herein and due to the said impact, he sustained severe injuries. He was admitted in Government Hospital, Kancheepuram and was referred to Private Hospitals for better treatment. Due to the accident, he suffered fractures on right knee, right shoulder and the foot of both legs. Hence, he filed a claim petition before the Tribunal claiming a compensation of Rs.3,00,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- as total compensation payable by the respondents herein. Stating that the quantum of compensation awarded by the Tribunal is disproportionate to

the injuries sustained by the claimant, this Civil Miscellaneous Appeal came to be filed by the appellant/claimant herein.

4. Heard the learned counsel for both sides.

5. The learned counsel for the appellant submitted that the award passed by the Tribunal is on the lower side and it needs considerable enhancement. The Tribunal failed to consider the fact that there is no movement in the claimant's hip and his right leg was shortened by 1 ½ inches; hence, the Tribunal ought to have awarded more amount towards pain and sufferings; the Tribunal failed to award any amount under the heads of Transportation and attendant charges.

6. On the other hand, the learned counsel for the 2nd respondent Insurance Company submitted that the Tribunal, based on the materials available on record, has awarded the compensation, which is nothing but just and hence no interference is called for. Further, the Tribunal explained in detail about the doctor's evidence and the assessment of disability by the doctor and hence there is no need to interfere with the award passed by the Tribunal.

7. As far as the negligence aspect is concerned, the Tribunal has taken note of the fact that the Driver of the Car was not examined to speak about the accident. First Information Report shows that on a complaint given by one Balaji, a case was registered against the driver of the car; evidence of PW 1 and Ex.P.1, First Information Report correlate each other and hence the Tribunal has fixed the liability on the driver of the car, which was insured with the 2nd respondent. The said findings rendered by the Tribunal on negligence are based on documents and evidence adduced. Hence, this Court is of the view that interference on such findings is not necessary.

8. As far as quantum is concerned, the Tribunal has awarded sums of Rs.40,000/-and Rs.45,000/- towards loss of future earnings and disability respectively. Further, a sum of Rs.10,000/- has been awarded toward extra nourishment. This Court is of the view that the said sums awarded under such heads are correct, since they are supported by the evidence of PW 2 doctor, who has deposed that the appellant had fractures over his right hip and the same had mal-united and there is no movement in the hip and his right leg was shortened by 1 ½ inches. In such view of the matter, this Court is of the opinion that the itemization done by the Tribunal requires no interference and the same have to be confirmed and they are confirmed as such.

9. However, the Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings. It is not in dispute that the claimant is not able to use the stair case and there

is limping while walking and he cannot fold his leg and sit in cross legs and he cannot lift any heavy goods. In such view of the matter, the sum awarded under the head of pain and sufferings is too low and it has to be enhanced. A sum of Rs.20,000/- in the place of Rs.5,000/- would be the just compensation and it is awarded accordingly.

10. Further, as contended by the learned counsel for the appellant/claimant that the Tribunal has not awarded any sum towards Transportation expenses and attendant charges. It is also not in dispute that the appellant /claimant was in hospital for more than a month. Hence, a sum of Rs.2,000/- is awarded towards Transportation expenses, Rs.3,000/- towards attendant charges.

11. At this juncture, the learned counsel for the 2nd respondent submitted that the Insurance Company cannot be saddled with the interest at 9% per annum, since the claim petition has been filed during the year 1999 and the appeal is being disposed of only in the year 2019.

12. The said contention has some force. Accepting the said submission, this Court hereby modifies the rate of interest for the enhanced compensation amount from 9% to 7.5% per annum, from the date of filing of the appeal (13.06.2005), till the date of deposit. The break up details of the enhanced compensation are as follows:-

S.No	Head	Compensation (in.Rs.)	
		Awarded by the Tribunal	Enhanced by this Court
1.	Extra nourishment	10,000.00	10,000.00
2.	Transportation expenses	-	2,000.00
3.	Attender's Charges	-	3,000.00
4.	Loss of future earnings	40,000.00	40,000.00
5.	Towards disability	45,000.00	45,000.00
6.	Pain and sufferings	5,000.00	20,000.00
Total		1,00,000.00	1,20,000.00

13. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the quantum of compensation from Rs.1,00,000/- to Rs.1,20,000/-, which is payable with interest at the rate of 7.5% by the 2nd respondent herein, from the date of appeal till the date of deposit. No costs. The 2nd respondent / Insurance Company shall deposit the enhanced compensation amount, along with interest and costs, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the Savings Bank Account of the claimant / appellant herein, through RTGS, within one week thereafter. It is needless to state that the appellant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk/vrn

To

1. The Motor Accident Claims Tribunal/ Additional District Court,

Fast Track Court No.II, Kancheepuram

2. The Section Officer

V.R.Section

Madras High Court

Chennai 104

+1cc to Mr.D.Baskaran , Advocate SR.No. 64021

+1cc to Mr.N.Veerasamy , Advocate SR.No. 63702

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A.SK(05/03/2020)

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