



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4135 of 2005

C.Paramasivam

..Appellant/Petitioner

Vs.

1. G. Premkumar

2. K.Murugan

3. The Manager,
New India Assurance Company Ltd.,
251, Thiruvotriyur High Road,
Thandaiyarpuram, Chennai - 21.

(Respondents 1 & 2 set exparte
before the Tribunal)

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.04.2004 made in M.C.O.P.No.35 of 2003, on the file of the Motor Accidents Claims Tribunal, First Additional Sub-Judge, Erode.

For Appellant : Mr.N.Manokaran
For R3 : Mr.S.Manohar

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal, seeking enhancement of the same.

2. According to the appellant/claimant, on 20.10.2002 at about 12.00pm, he was travelling as a pillion rider in the moped bearing Regn.No.TN 28 U 5502 on Sankari to Bhavani Main Road and at that time, a Maruthi car bearing Regn.No.TN 07 J 9059 belonging to the second respondent and insured with the third respondent insurance company, came in a rash and negligent manner and dashed against the moped. As a result of the same, the appellant sustained grievous injuries, for which, he filed a claim petition, claiming compensation of Rs.2,00,000/-. The



Tribunal, after considering the oral and documentary evidence, awarded a compensation of Rs.71,000/- with interest at 9% per annum from the date of petition. Challenging the same, the appellant is before this Court with the present appeal seeking enhancement of the compensation awarded by the Tribunal.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.30,000/- towards 35% permanent disability and the same needs to be enhanced. The learned counsel further submitted that the compensation awarded under other heads are very meagre; and the Tribunal did not consider the gravity of injuries suffered by the appellant/claimant, while awarding the compensation.

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 bone fracture at left leg knee, nose and multiple injuries at right leg foot; he was 26 years old and was earning Rs.150/- per day by working as Mason; and he initially took treatment at Sankari Government Hospital and thereafter, at Erode Government Hospital as inpatient for a period of one month. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 35% permanent disability; Ex.P2 is the wound certificate; and Ex.P3 is the disability certificate.

7. Though PW2 doctor assessed the permanent disability sustained by the appellant/claimant at 35%, the Tribunal has taken only 30% and awarded Rs.30,000/- by fixing Rs.1000/- per percentage of disability, which appears to be very low. Taking note of the evidence of the doctor and the nature of the injuries suffered by the appellant/claimant, this Court is inclined to take the entire percentage of disability assessed by the doctor and accordingly, awards Rs.35,000/- for permanent disability at 35%.

8. The appellant/claimant stated that due to the disability sustained in the accident, he could not do his avocation as before, as his left leg was shortened by 4 cm and his left leg knee was reduced; and he has been taking treatment continuously. Thus, having regard to the oral and documentary evidence adduced



before the Tribunal, gravity of the injuries suffered and the period of treatment undertaken by the appellant/claimant, the compensation awarded by the Tribunal under other heads, in the considered opinion of this Court, need appropriate enhancement and are accordingly awarded. 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 35%	30,000/-	35,000/-
Transport expenses	1,000/-	2,000/-
Extra nourishment	3000/-	5,000/-
Medical expenses	5000/-	10,000/-
Pain and suffering	5,000/-	10,000/-
Loss of income	2000/-	18,000/-
Loss of earning capacity	25,000/-	30,000/-
Total	71,000/-	1,10,000/-

9. In view of the above, the award of the Tribunal is enhanced from Rs.71,000/- to Rs.1,10,000/-. However, there is no modification with regard to the interest awarded by the Tribunal at 9% p.a. 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.

10. Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The First Additional Sub-Judge, Erode.

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Copy to
The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.N.Manokaran, Advocate sr 54219

+1 CC to Mr.S.Manohar, Advocate sr 53937.

C.M.A.No.4135 of 2005

BP(CO)
SP(25/08/2021)