IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2019

PRONOUNCED ON : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4264 of 2005

Angamuthu ... Appellant/Petitioner

Vs

1.C.Sinraj (set exparte before the Labour Court)

2.United India Insurance Co.Ltd.,
No.1170, Maruthi Complex
Mettur Road,
Erode-638 011. ... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.01.2005 made in MCOP No.248 of 2002 on the file of the Motor Accidents Claims Tribunal (the Additional District Judge and Special Judge for E.C.Act Cases), Salem.

For Appellant : Mr.D.Shivakumaran

For Respondents: No appearance for R1
Mrs.R.Sri Vidhya for R2

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.4,30,000/- towards compensation due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 13.10.2000 at about 02.50 p.m., the appellant / claimant was travelling in a two-wheeler (Bajaj M-80) bearing Reg.No.TN-28-7029, as pillion rider, in the Tiruchengode-Erode Road. When the two-wheeler reached near Rajagoundampalayam Mariamman Temple, the TATA-407 vehicle bearing Reg.No.TN-01-F-2736, driven by its driver in a rash and negligent manner, came from the opposite direction at high

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

speed, and dashed against the two-wheeler in which the appellant was travelling. Due to the said impact, the appellant / claimant sustained grievous injuries all over the body. The appellant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,30,000/- 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 subsequent to the accident, the appellant was taken to Tiruchengode Government Hospital, and thereafter he was referred to Erode L.K.M.Hospital and thereafter admitted in the MIOT Hospital, Chennai. The appellant underwent several surgeries and enormous amounts were spent by way of treatment and surgical charges. The claimant is not able to sit, stand, walk and do any work, as before. The learned counsel has further submitted that the Tribunal has not awarded any amount towards extra nourishment and has awarded only a meagre sum of Rs.20,000/- towards pain and suffering. He also submitted that the Tribunal ought to have awarded more amount towards medical expenses. It is also his submission that no amount has been awarded towards transport expenses. 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 rightly considered the materials and evidence available on record and has arrived at the compensation, which is just, fair and reasonable and hence the judgment passed by the Tribunal does not require any interference in the hands of this Court.

सत्यमेव जयते

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.

WEB COPY

7.Originally, the appellant / claimant claimed a total compensation of Rs.24,00,000/- and restricted the same to Rs.15,00,000/-. The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of income, Rs.20,000/- towards pain and suffering and Rs.2,60,000/- towards medical expenses, thus totalling a sum of Rs.4,30,000/- with interest at the rate of 9% per annum from the date of petition. Even though the averments made in the

https://hcservices.ecourts.gov.in/hcservices/

claim petition have been denied by the Insurance Company in the counter filed before the Tribunal, the Insurance Company have not come forward to challenge the judgment passed by the Tribunal by filing an appeal before this Court.

8.According to the appellant / claimant, immediately after the accident, the appellant / claimant was taken to Tiruchengode Government Hospital. Thereafter, the appellant was admitted in the L.K.M.Hospital, Erode and underwent a surgery. He was in-patient in the hospital from 13.10.2000 to 23.10.2000. Thereafter, he was shifted to Chennai on 24.10.2000 and admitted in the MIOT Hospital, Chennai, where he took treatment from 24.10.2000 to 26.10.2000. It is stated in the claim petition that thereafter, the appellant / claimant was shifted to Isabella Hospital, Chennai on 26.10.2000 and was taking treatment continuously. During the above periods, the claimant underwent major surgeries on 06.11.2000, 22.11.2000, 03.01.2001, 17.02.2001. After the accident, the appellant / claimant has been completely bed-ridden and two attenders have been posted to serve him day and night. The right knee and thigh bones have been smashed on account of the accident and hence, replacement of bones and fixation of plates have been done on the appellant / claimant. It is seen that the whole family of the appellant / claimant is worried about the future of the appellant.

9.A perusal of Ex.P7-Discharge Summary issued by L.K.M. Hospital, Erode, would reveal that the appellant / claimant was admitted in the said hospital on 13.10.2000, and an operation was done on the same day; devitalised tissues have been removed and the fracture was stabilised with transknee. Thereafter, he was referred to MIOT Hospital Chennai. A perusal of Ex.P8-Discharge Summary issued by MIOT Hospital, Chennai, would reveal that the appellant was admitted in the hospital with the presence of "Grade-III Compound Comminuted Supra Condylar Fracture Right, Fracture Distal Femur Right with Comminuted Fracture of the patella with lacerated Ligamentum Patellae". He had a sutured wound 7½ inches long on the lateral aspect of the lower third of the right thigh. This wound was extending on to the knee transversely, measuring to about 3 inches long. The right knee was swollen and there was effusion and warmth. He was discharged on 25.10.2000. Subsequently, he was treated by Dr.K.Sriram, Orthopaedic Surgeon, Chennai. Ex.P9 is the Discharge Summary issued by the said Dr.K.Sriram. The appellant / claimant took treatment from the said Doctor from 26.10.2000 to 26.05.2003, ie., for a period of 2 years and 5 months. Orthofix fixation on the claimant was done on 06.11.2000 and Orthofix limb lengthening was done on 22.11.2000 and thereafter, the claimant was under constant medical treatment upto 26.05.2003.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10.The appellant / claimant has claimed a sum of Rs.5,00,000/- towards medical expenses. In this connection, the Tribunal has awarded a sum of Rs.2,60,000/- relying upon the medical bills marked as Ex.P10. The appellant claimed the medical bills only upto 31.03.2001. But the fact remains that he took continuous treatment from Dr.K.Sriram, even till 26.05.2003. Hence, the Tribunal ought to have awarded an amount towards future medical expenses. On a perusal of the records, this Court deems it fit to award a sum of Rs.2,50,000/- towards future medical expenses. The Tribunal has not awarded any sum towards extra nourishment and transport expenses. It would be appropriate to award a sum of Rs.50,000/- towards extra nourishment and Rs.20,000/- towards transport to hospital. The amount of Rs.20,000/- awarded by the Tribunal towards pain and suffering is very low, considering the injuries sustained by the claimant. It would be appropriate to award a sum of Rs.1,20,000/- towards pain and suffering. Hence the amount awarded by the Tribunal towards pain and suffering at Rs.20,000/- stands modified to Rs.1,20,000/-. Further, the Tribunal has not awarded any amount towards attender charges. It would be appropriate to award a sum of Rs.80,000/- towards attender charges.

11.The details of the modified compensation are as under:

| HEADS | AMOUNT (Rs.) |
|---|---|
| Loss of income | 1,50,000/- |
| Medical expenses | 2,60,000/- |
| Future Medical Expenses | 2,50,000/- |
| Pain and suffering | 1,20,000/- |
| Extra nourishment | 50,000/- |
| Transport expenses | 20,000/- |
| Attender charges | 80,000/- |
| TOTAL.... | 9,30,000/- |

12.Accordingly, the appellant / claimant is entitled to the modified compensation of Rs.9,30,000/- with interest at the rate of 9% per annum from the date of petition.

13.The second respondent Insurance Company is directed to deposit the modified compensation of Rs.9,30,000/- with interest at 9% p.a. from the date of petition, 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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appellant is permitted to withdraw the same, on making proper application before the Tribunal.

14.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
(The Additional District Judge and Special Judge
for E.C.Act Cases), Salem.

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

+1cc to Mr.R.Sreevidhya, Advocate Sr.59314
+1cc to Mr.D.Shivakumaran, Advocate Sr.57940

C.M.A.No.4264 of 2005

pp[co]
srg 23/11/2020

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/