

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1043 of 2009

M.R.Sunder Raman

... Appellant/ Petitioner

Vs

1.Hindustan College of Engineering,
No.40, G.S.T.Road
St.Thomas Mount
Chennai-600 116.

2.The Oriental Insurance Co.Ltd.,
United India Building,
Esplanade,
Chennai-600 108. ... Respondents/ Respondents

Appeal under Section 173 of the Motor Vehicles Act filed against the judgment and decree dated 04.01.2008 made in OP No.2444 of 2002 on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : No appearance for R1
Mr.R.Sivakumar for R2

JUDGMENT

The facts in brief, are as follows:

On 31.08.2001 at about 08.30 a.m., the appellant herein was riding his motorcycle bearing Reg.No.TN-07-E-3227 along the Old Mahabalipuram Road. At that time, the Private Bus bearing Reg.No.TN-22-J-8741, belonging to the first respondent herein and insured with the second respondent Insurance Company, came in the same direction in a rash and negligent manner at high speed, and dashed against the back side of the appellant's motorcycle. Due to the said impact, the appellant sustained grievous injuries. The appellant / injured 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.1,09,000/- with interest at the rate of 7.5%

per annum from the date of petition.

2.Challenging the same, the appellant-claimant has come up with the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant-claimant has submitted that even though the Tribunal fixed the monthly income of the claimant as Rs.10,000/- per month, nothing has been awarded under the head 'Future Loss of Earning', when the fact remains that the claimant suffered 50% disability. It is also submitted that the Tribunal has awarded meagre sum towards other heads. Stating so, the learned counsel prayed for enhancement of compensation.

4.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the compensation, which is just, fair and reasonable and hence the compensation awarded by the Tribunal, 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 carefully and meticulously.

6.This appeal has been filed by the claimant for enhancement of compensation. The Tribunal has awarded a sum of Rs.66,987/- (rounded off to Rs.67,000/-) towards medical expenses based upon Ex.P5, which is an actual expenditure. The Tribunal has also awarded a sum of Rs.5,000/- for a single injury, Rs.30,000/- towards disability, Rs.1,000/- towards transport to hospital, Rs.1,000/- towards extra nourishment and Rs.5,000/- towards loss of income during the treatment period. But the Tribunal has not awarded any amount towards pain and suffering. It would be appropriate to award a sum of Rs.20,000/- towards this head. Further, even though P.W.2-Doctor has assessed the disability of the appellant / claimant at 50%, the Tribunal reduced the same on the ground that the injury being a single fracture. Considering the injuries suffered by the appellant / claimant and also the fact that he had sustained fracture in the left humerus with dislocation, for which internal fixation was done and that he took further treatment in another hospital, this Court is of the view that the Doctor has correctly fixed the percentage of disability at 50% and the same cannot be reduced and it would be appropriate to award a sum of Rs.1,000/- per percentage of disability, which works out to Rs.50,000/-. Hence, the amount awarded by the Tribunal towards disability stands modified from Rs.30,000/- to Rs.50,000/-.

7. Accordingly, the details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Medical expenses	67,000/-
Single injury	5,000/-
Disability	50,000/-
Transport to hospital	1,000/-
Extra nourishment	1,000/-
Loss of income during the treatment period	5,000/-
Pain and suffering	20,000/-
TOTAL...	1,49,000/-

8. Thus, the appellant/claimant is entitled to the modified compensation of Rs.1,49,000/-. However, it is made clear that only for the compensation of Rs.1,09,000/- awarded by the Tribunal, the interest of 7.5% per annum shall be calculated from the date of claim petition. The interest of 7.5% per annum for the additional amount now granted by this Court, ie., Rs.40,000/- shall be calculated from the date of filing of this appeal.

9. The Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, 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 appellant-claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KM

To

1.The IV Judge, Small Causes Court
(Motor Accidents Claims Tribunal), Chennai.

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

+lcc to Mr.R.Sivakumar , Advocate SR.No. 67324

+lcc to Mr.A.Shanmugaraj , Advocate SR.No. 68359

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A.SK(11/02/2020)



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