

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.3121 of 2008

Dr.D.S.Rajesh

... Appellant/ Petitioner

..vs..

1.V.Chandrasekar

2.The United India Insurance Co.Ltd.,
No.38, Anna Salai,
Chennai-600 002. ... Respondents/ Respondents
(R1-Set exparte before the Tribunal)

Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 14.03.2008 made in M.A.C.T.O.P.No.779 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District cum Sessions Court (Fast Track Court-II), Chennai.

For Appellant : Mr.R.Kalai Arasan
For Respondents : Mr.D.Bhaskaran for R2
R1-set exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant, against the Judgment and Decree dated 14.03.2008 made in M.A.C.T.O.P.No.779 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District cum Sessions Court (Fast Track Court-II), Chennai, by raising various grounds.

2. The case of the appellant is that on 25.01.2004 at about 10.30 pm, while he was riding Motor Cycle bearing registration No.TN-01-V-9622, from Teynampet to Adambakkam, along Anna Salai, north to south direction and when he was proceeding opposite to L.R.Swamy Building, an Auto Rickshaw bearing registration No.TN-01-AE-0805, which was driven in a rash and negligent manner came from the opposite direction, in a wrong side and dashed against the Motor cycle, as result of which, the appellant sustained grievous injuries viz., fracture of right clavicle, fracture of right 4th metacarpal head, Head Injury-left Posterior temporo parietal hemorrhagic contusion and subdural heamatoma, K-Wire fixation done. He was treated as in-patient on two occasions at M/s.Apollo

Hospitals, i.e., till 07.10.2004.

3. The learned counsel for the appellant submitted that the appellant himself was examined as PW1 and Exs.P1 to P15 were marked. Ex.P1 is the FIR. Ex.P2 is the Rough Sketch. The appellant as PW1, deposed before the Tribunal, regarding the manner of the accident and he attributed negligence solely on the part of the driver of the Auto Rickshaw. Ex.P3 is the Charge Sheet. The learned Tribunal has fixed the negligence on the part of the driver of the Auto Rickshaw viz., the first respondent. There is no contra evidence produced on the side of the first respondent to prove the same.

4. The appellant was a practicing Doctor, and earning a sum of Rs.20,000/- per month. The Tribunal has awarded for loss of earnings for one month, a sum of Rs.20,000/- and for Pain and Sufferings, a sum of Rs.20,000/- and for Permanent Disability and loss of earning power, a sum of Rs.60,000/-. The total claim made by the claimant was Rs.6,50,000/- and the learned Tribunal was awarded a sum of Rs.1,90,000/- as total compensation and the same is tabulated hereunder.

Permanent disability	..	Rs.60,000/-
Transport	..	Rs. 5,000/-
Pain and suffering	..	Rs.20,000/-
Medical expenses	..	Rs.80,000/-
Loss of earning	..	Rs.20,000/-
Extra Nourishment	..	Rs. 4,000/-
Damages to Cloths	..	Rs. 1,000/-
Total	..	Rs.1,90,000/-

5. The first respondent remained ex-parte. A counter affidavit has been filed on behalf of the second respondent / Insurance Company denying all the allegations of the accident and they refuted the averments contained in the claim petition and also as regards the time, date of accident and questioned whether the Auto Driver was holding proper licence and prayed that the claim petition filed by the appellant is not maintainable and prayed for dismissal of the same.

6. On perusal of the documents, it is seen that such accident was registered by the Police and FIR, which has been filed herein was marked as Ex.P1 and Ex.P2 is the Rough Sketch of the said Area, where the accident has been occurred. From the other documents filed, it is found that the said accident has been caused by the said Auto Driver, who has been charge sheeted. The Tribunal has rightly held that the act of the Auto driver led to the accident and it is also found from the evidence of PW1 i.e., the appellant herein that due to accident, he was unconscious and not in a position to regain himself and he was not at fault.

7. On perusal of the documents, it is also seen that the Tribunal has rightly held that due to the said negligent

act of the first respondent/Auto Driver, the said accident had taken place, and the same is confirmed. The appellant/Doctor who was earning a sum of Rs.20000/- per month by running his own Medical clinic and he was a registered medical practitioner and necessary documents have been produced before this Court to substantiate the same and he has also produced his driving licence. The doctor who was running the clinic, was unable to run the same from 26.01.2004 and that he has also claimed loss of income and relevant documents have been produced to show that he was taking treatment from 26.01.2004 to 03.02.2004 in Apollo Hospital. He was again admitted on 07.10.2004 and taken treatment, but the Tribunal had fixed only a sum of Rs.20,000/- as loss of income and the same is found is to be meagre, hence, this Court is of the view that the same has to be enhanced from Rs.20000 to Rs.30000/- and the same is hereby enhanced.

8. The appellant had suffered fracture of right clavicle, fracture of right 4th metacarpal head and Head Injury etc. Due to the said injuries, he had to travel to the hospital. Accordingly, the Tribunal has rightly fixed a sum of Rs.5000/- towards transport expenses and this Court is not inclined to interfere with the extra nourishment which has been awarded by the Tribunal for a sum of Rs.4000/- and a sum of Rs.1,000/- towards damage to clothes, are hereby, confirmed.

9. With respect to Medical Expenses, a sum of Rs.80000/- has been awarded by the Tribunal, which this Court also confirms the same. The Tribunal has fixed only a sum of Rs.20,000/- towards Pain and Sufferings. This Court is inclined to enhance the same by another sum of Rs. 10,000/- and thereby, a total sum of Rs.30,000/- is being awarded towards Pain and Sufferings, as he had fracture in the right shoulder and that he ought to have used the left hand for treating the patients and rightly he suffered a lot in moving his right hand.

10. As regards Permanent Disability, taking into consideration that the injured sustained 40%, the Tribunal has awarded only a sum of Rs.60,000/-, this Court is inclined to modify the same by fixing 2% per disability and accordingly, a sum of Rs.80,000/- for 40% disability is hereby awarded. But for loss of amenities, the Tribunal has not awarded any amount, this Court is inclined to award a reasonable amount towards amenities and hence, a sum of Rs.20000/- is awarded to him and a sum of Rs.5000/- is awarded towards Attendant benefits since he has been treated as inpatient from 26.01.2004 to 03.02.2004 and again he was admitted and discharged on 07.10.2004, this Court is of the view that some person had certainly attended to him and hence, a sum of Rs.5000/- has been awarded towards attendant charges. Accordingly, this Court is inclined to enhance compensation for a total sum of Rs.2,60,000/- from Rs.1,90,000/-, to which

the Tribunal awarded. The details of the modified enhanced award, are stated hereunder:

Permanent disability	..	Rs.80,000/- (enhanced)
Transport	..	Rs.5,000/- (confirmed)
Pain and suffering	..	Rs.30,000/- (enhanced)
Medical expenses	..	Rs.80,000/- (confirmed)
Loss of earning	..	Rs.30,000/- (enhanced)
Loss of amenities	..	Rs.20,000/- (Granted)
Attendant charges	..	Rs. 5,000/- (Granted)
Extra Nourishment	..	Rs. 4,000/- (confirmed)
Damages to Cloths	..	Rs. 1,000/- (confirmed)

Total .. Rs.2,60,000/-

11. Accordingly, the award of the Tribunal is enhanced from Rs.1,90,000/- to Rs.2,60,000/- (Rupees Two Lakhs and Sixty thousand Only) . The second respondent Insurance Company is directed to deposit the modified compensation of Rs.2,60,000/- after deducting the amount, if any already deposited, within a period of eight 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 a formal application before the Tribunal.

12. This Civil Miscellaneous Appeal is partly allowed.
No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District cum Sessions Judge,
Motor Accident Claims Tribunal,
(Fast track Court-II), Chennai.

Copy to:

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

+1cc to Mr.D.Bhasakaran, Advocate SR.No. 101424

C.M.A.No.3121 of 2008

A.SK(26/08/2020)