

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3636 of 2008

M.Karthikeyan

.. Appellant

Vs.

1.R.Barath

2. Bajaj Allianz General Insurance Company,
No.11, People Park,
Arts College Road, Coimbatore.
(First respondent set exparte
before the Tribunal)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.02.2008 made in M.C.O.P.No.147 of 2006, on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Salem.

For Appellant : Mr.S.Sivakumar

For R2 : Ms.R.Sree Vidhya

J U D G M E N T

According to the appellant/claimant, on 16.07.2005 at about 6.00am, he was going as a pillion rider in the motor cycle bearing Registration No.TN10 K 4503 belonging to the first respondent and insured with the second respondent insurance company. When the motorcycle was proceeding on S.C.Road, Vettuvankenni, due to rash and negligent act on the part of its rider, his friend Shanmugam, it hit a cyclist. As a result of the same, the appellant sustained grievous injuries. Stating so, he filed a claim petition, claiming compensation of Rs.10,00,000/-. The Tribunal, after considering the oral and documentary evidence adduced by the parties, awarded a total compensation of Rs.1,05,923/- with interest at 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so determined by the Tribunal, the appellant has preferred this appeal seeking enhancement of the same.

2. The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.5,000/- towards 40% permanent disability; the compensation awarded under other heads are also very meager; and hence, the quantum of compensation needs substantial enhancement.

3. Per contra, the learned counsel for the second 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.

4. Heard the learned counsel on either side and perused the materials available on record.

5. The appellant/claimant himself examined as P.W.1, who deposed that in the accident, he had sustained bone fracture, besides receiving grievous injuries in all over the body; he was taken treatment from 16.07.2005 to 23.07.2005 in Chennai Malar Hospital as inpatient; and he was 22 years old and was earning Rs.10,000/- per month as an IT Engineer. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 40% permanent disability; Ex.P2 is the discharge summary; Ex.P3 is the scan report; Ex.P6 is the X Ray; as per which, the appellant suffered the following injuries: soft tissue scalp swelling was seen in the left frontal and right temporal regions, impression - mild diffuse cerebral EDEMA, fracture in Mandible left condyle and left parasymphysal region; and Ex.P7 is the disability certificate issued by PW2 doctor. However, the Tribunal has awarded only a lesser sum of Rs.5,000/- towards grievous injuries, as rightly pointed out by the learned counsel for the appellant and hence, the same is hereby enhanced to Rs.40,000/- by awarding Rs.1000/- per percentage for 40% permanent disability. Further, the award of Rs.69,423/- medical expenses incurred by the appellant/claimant as per Ex.P7 medical bill series, is hereby rounded off to Rs.70,000/-.

6. That apart, considering the materials and evidence adduced by the appellant/claimant, this Court is inclined to enhance the compensation awarded by the Tribunal under the heads "transport expenses", "Extra nourishment", "loss of income during treatment period", "damage to clothes" and "mental agony" to certain extent. However, there is no modification with regard to the compensation awarded towards pain and suffering and the rate of interest at 7.5%pa. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,05,923/- to Rs.1,50,000/-, the details of which are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 40%	5,000/-	40,000/-
Transport expenses	1,000/-	2,000/-
Extra nourishment	5,000/-	7,000/-
Medical expenses	69,423/-	70,000/-
Pain and suffering	10,000/-	10,000/-
Mental Agony	3,000/-	5,000/-
Damage to cloths	500/-	1000/-
loss of Income during treatment period	12,000/-	15,000/-
Total	1,05,923/-	1,50,000/-

However, it is made clear that the enhanced sum of Rs.44,077/- shall carry interest at 7.5%pa only from the date of filing of this appeal.

7. In fine, this appeal is partly allowed. No costs. The second 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.

-s/d-
Assistant Registrar

True Copy
सत्यमेव जयते
Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Salem.

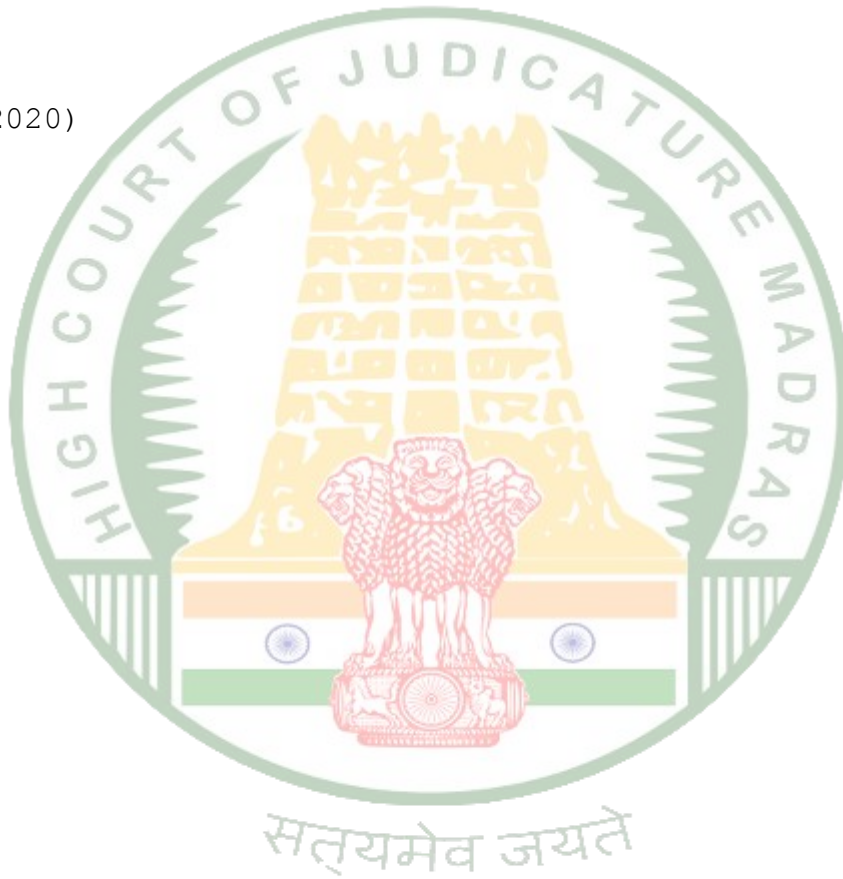
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2. The Section Officer,
VR Section,
High Court, Madras.

+1 CC to Mr.S.Sivakumar, Advocate sr 57168.

C.M.A.No.3636 of 2008

RV(CO)
SP(09/06/2020)



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