

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1711 of 2009

G.Shanmugam

... Appellant/Petitioner

Vs

1.M.Damodaran

2.M/s.United India Insurance Co.Ltd.,
No.38, Anna Salai, Chennai-2. ... Respondents/Respondents

(1st Respondent was exparte befoe tribunal hence
may be dispense with)

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 18.06.2008 made in M.AC.T.O.P
No.2019 of 2003 on the file of the Motor Accidents Claims
Tribunal, Additional District and Sessions Court, Fast Track
Court No.V, Chennai.

For Appellant : Mr.C.Prabhakaran

For Respondents : Mr.D.Bhaskaran - for R2

J U D G M E N T

This appeal is preferred by the appellant/claimant against
the award of a sum of Rs.45,000/- 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 28.02.2003 at about 04.00 a.m.,
the appellant/ claimant was travelling in the auto-rickshaw as a
passenger, which was proceeding along P.H. Road, Chennai. When
the auto-rickshaw came near Nerkundram bus stop, the Van bearing
Reg.No.TN-04-K-4237 belonging to the first respondent and
insured with the second respondent Insurance Company, came in a
rash and negligent manner and dashed against the auto-rickshaw.
Due to the said impact, the appellant sustained 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.45,000/- with interest at the rate of 7.5% 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 the Tribunal had erred in fixing the partial permanent disability at the rate of 40% and granted a compensation of Rs.10,000/- towards disability, which is very low, since the appellant had sustained fracture in the hip and also dislocation of the 5th rib. He also submitted that the Tribunal has erred in awarding a sum of Rs.9,000/- towards pain and suffering, which is very low as he had taken treatment as out patient for more than six months and incurred further expenses by means of Hospital Charges, Medical Bills etc. Contending so, the learned counsel submitted that the award of the Tribunal is very much on the lower side and seeks enhancement of compensation, considering the injuries sustained by the claimant.

5.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.

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

7.Against the claim of the claimant, the Tribunal has awarded a sum of Rs.22,000/- towards medical expenses relying on Ex.P4-Medical Bills. Based on Ex.P8 Disability Certificate, the Tribunal has awarded a sum of Rs.10,000/- towards permanent disability, Rs.9,000/- towards pain and suffering. The Tribunal has also awarded a sum of Rs.1,000/- towards transport expenses, and Rs.3,000/- towards loss of earning, thus awarding a total compensation of Rs.45,000/-. But it is seen that due to the injuries sustained viz., fracture of rib and dislocation of the 5th rib, the claimant had to undergo continuous treatment as an out patient, incurring further expenses by means of Hospital Charges, Medical Bills etc and also has gone through considerable pain and suffering. In these circumstances, this Court is of the considered opinion that in addition to the amounts awarded by the Tribunal, it would be appropriate to award a sum of Rs.5,000/- towards transportation expenses, Rs.5,000/- towards attender charges, Rs.5,000/- towards loss of earning, Rs.30,000/- towards loss of future earnings on account of permanent disability and Rs.10,000/- towards pain and suffering.

8.The details of the modified compensation are as follows:

HEAD	AMOUNT (Rs.)
Medical expenses	22,000/-
Transportation Expenses	6,000/-
Attender Charges	5,000/-
Loss of earning	8,000/-
Permanent disability	10,000/-
Loss of Future Earnings on account of permanent disability	30,000/-
Pain and Suffering	19,000/-
TOTAL...	1,00,000/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,00,000/-. It is made clear that only for the compensation of Rs.45,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.55,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

9.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, with interest and costs, 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 is permitted to withdraw the same on making proper application before the Tribunal.

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

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KST

To

1.The Motor Accidents Claims Tribunal
Additional District and Sessions Court,
Fast Track Court-V, Chennai

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.71869

+1cc to Mr.V.Jagannathan, Advocate SR.No.72044

C.M.A.No.1711 of 2009

NR(CO)
GMY(26/08/2020)



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