

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.1260 OF 2011

C.Ramesh

...Appellant/Petitioner

.Vs.

1.The Managing Director
Pondy Road Transport Corporation,
Iyyanar Koil Street, Raja Nagar
Pondicherry
(R1 was set exparte in the trial court)

2.National Insurance Co. Ltd.,
No.62 A, Jawaharlal Nehru Street,
Pondicherry Union Territory,
Pondicherry. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award dated 05.01.2011 made in M.C.O.P. No.1334 of 2008 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.R.Arundattan
for M/s.C and K Law Firm

For Respondents: Mr.D.Bhaskaran for R2.
R1 - Exparte.

JUDGMENT

The appellant is the claimant in M.C.O.P. No.1334 of 2008 on the file of the II Judge, Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.9,00,000/- for the injuries sustained by him in a road accident that took place on 03.03.2008. According to the appellant / claimant, on 03.03.2008, he was travelling in a two wheeler bearing Registration No.TN-03-A-2252 as a pillion rider along E.C. Road and that when he was nearing Kanathur, at about 6:30 hours , a

speeding bus bearing registration No.PY-01-AL-5364 belonging to the first respondent and insured with the second respondent, hit the two wheeler, as a result of which, he sustained grievous injuries all over his body. His further contention is that the rash and negligent driving of the driver of the bus bearing registration No.PY-01-AL-5364 was the cause of the accident and that since the said bus was insured with the second respondent / The National Insurance Company Limited, Pondicherry, both of them are jointly and severally liable to pay compensation of Rs.9,00,000/- to him.

2. The first respondent / Pondicherry Road Transport Corporation remained absent before the tribunal and therefore, they were set exparte. The second respondent / The National Insurance Company Limited, Pondicherry, contested the claim petition.

3. After analysing the evidence on record, the tribunal awarded a compensation of Rs.2,42,000/- together with interest at the rate of 7.5% per annum to the appellant / claimant. The award passed by the Tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Permanent disability	1,00,000/-
2.	Loss of earnings	27,000/-
3.	Transport to Hospital	1,000/-
4.	Extra nourishment	3,000/-
5.	Damages to cloth and articles	1,000/-
6.	Medical Expenses	80,000/-
7.	Pain and sufferings	30,000/-
	Total	2,42,000/-

Not satisfied with the quantum of compensation awarded by the tribunal, the appellant claimant has filed the present appeal seeking for enhancement of compensation.

4. Mr. R.Arundattan, learned counsel for the appellant/claimant would contend that Dr.N.Saichandiran (Pw4) assessed the partial permanent disability as 65% and the tribunal after taking into consideration the medical records, fixed the disability suffered by the claimant as 60%. However, while calculating loss of earning capacity, the tribunal took up 50% as partial permanent disability and awarded a sum of

Rs.1,00,000/. He would further contend that a very meagre amount of Rs.1,000/- and Rs.3,000/- were awarded by the tribunal under the heads " transportation charges " and "extra nourishment " respectively and no amount was awarded towards loss of amenities.

5. Per contra, the learned counsel appearing for the second respondent would contend that the tribunal after taking into account various aspects and the well established legal principles which were in vogue on the date of accident, awarded a compensation of Rs.2,42,000/- and the same need not be disturbed at this juncture.

6. It is to be pointed out that the tribunal has awarded Rs.2,000/- per percentage and therefore, a sum of Rs.1,20,000/- should have been awarded for partial permanent disability. The appellant/claimant has suffered the following injuries as per the discharge summary Ex.P9, Ex.P10 and Ex.P11.

- i) Fracture in neck of femur on the right leg.
- ii) Fracture of femoral condyle on the right leg.

Considering the nature of injuries suffered by the appellant/claimant, Rs.10,000/- each is awarded towards "transportation charges"and "extra nourishment"respectively. The contention of the learned counsel appearing for the appellant is that, the appellant is a Gold Smith and that he is not able to sit and do his work as before, on account of the accident. In the facts and circumstances, a sum of Rs.10,000/- is awarded towards loss of amenities. Hence, the appellant/claimant is entitled to the following amounts as detailed hereunder:

Sl.No.	Head	Amount (Rs.)
1.	Permanent disability	1,20,000/-
2.	Loss of earnings	27,000/-
3.	Transportation	10,000/-
4.	Extra nourishment	10,000/-
5.	Damages to cloth and articles	1,000/-
6.	Medical Expenses	80,000/-
7.	Pain and sufferings	30,000/-
8.	Loss of amenities	10,000/-
	Total	2,88,000/-

7. In the result,

(i) The appeal is partly allowed. No costs.

(ii) The award passed by the tribunal is enhanced to Rs.2,88,000/- (Rupees Two lakhs eighty eight thousand only) from Rs.2,42,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The second respondent / Insurance Company is directed to pay the enhanced compensation amount of Rs.2,88,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the claimant is entitled to withdraw the same, after following due process of law.

bga

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The II Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai
2. National Insurance Co. Ltd.,
No.62 A, Jawaharlal Nehru Street,
Pondicherry Union Territory, Pondicherry.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.D.Bhaskaran, Advocate, SR.No.1662

C.M.A.NO.1260 OF 2011

Kak (12/06/2019)