

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 21.03.2019]
[PRONOUNCED ON : 02.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2850 of 2010

N.Ramachandran ... Appellant/Petitioner

.. Vs ..

1. Sulaiman Traders,
No.155, Shanthi Medu Street,
Cheyyar, Cutchery,
Thiruvannamalai - 604 407.

(R-1 was set ex-parte in the trial Court)

2. ICICI Lombard General Insurance Co. Ltd.,
Chottabai Centre, No.140, 2nd and 3rd Floor,
Nungambakkam High Road,
Nungambakkam,
Chennai - 34.

... Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.06.2010 made in M.C.O.P.No.1204 of 2008 on the file of the V Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

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

For R-1 : Ex-parte

For R-2 : Mrs.R.Sreevidhya

JUDGMENT

Claimant is the appellant seeking enhancement of compensation awarded by the learned V Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai, in M.C.O.P.No.1204 of 2008, dated 22.06.2010.

2.The short facts that are essential for the disposal of this appeal is that the claim petitioner has preferred claim petition in M.C.O.P.No.1204 of 2008 before the learned V Judge,

Motor Accidents Claims Tribunal (Small Causes Court), Chennai, alleging that on 23.02.2008 at 00.10 hours, he was proceeding as Cleaner in the Swaraj Masda Van bearing Registration No.TN-25-U-6133 along with G.S.T. Road, from North to South Direction and when the said vehicle was nearing Airport Deccan Devil, the same was driven by its driver in a rash and negligent manner without following the traffic rules and regulations and dashed against another Lorry, which was going ahead. Due to which, the claimant sustained grievous injuries. The accident had occurred due to breakneck speed and reckless driving of the Swaraj Mazda Van. The driver of the Swaraj Mazda Van is directly responsible for the accident. Therefore, the first respondent herein as owner and second respondent herein as insurer of the offending vehicle are jointly, severally, vicariously and statutorily liable to pay compensation to the claimant. The claim petition was filed by the claimant for a sum of Rs.10,51,000/- restricted to Rs.10,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, the claimant examined himself as P.W.1 and Dr.K.J.Mathiazhagan was examined as P.W.2 and ten documents were marked as Exs.P.1 to P.10. On behalf of the respondents before the Tribunal, no witness was examined and no document was marked.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, has come to a conclusion that the accident has taken place only due to the rash and negligent driving of the driver of the first respondent (before the Tribunal) and awarded a total sum of Rs.2,13,500/- together with interest at 7.5% per annum from the date of the claim petition till the date of deposit. Having not satisfied with the award passed by the Tribunal, the claimant has preferred this appeal before this Court seeking enhancement of compensation.

5. The factum of the accident, manner of the accident and negligence on the part of the driver of the first respondent's vehicle are not in dispute and hence, the same are hereby confirmed.

6. On the point of quantum, both the parties were heard.

7. On a perusal of records, it is seen that as per Ex.P.2-Discharge Summary, the age of the claimant is 20 years and he was working as Cleaner in Sulaiman Traders in Thiruvannamalai District. As per Ex.P.2-Discharge Summary, it is seen that the claimant had sustained fracture of both side shaft of femur, fracture of both bones right leg and fracture of both bones left leg and also undergone surgeries for three occasions and closed it nailing for both bone left leg and ORIF for right femur and

ORIF with ILAM nailing for fracture of both bones right leg were done to him.

8. P.W.2-Dr.K.J.Mathiazhagan, had issued Ex.P.1-Wound Certificate, wherein, it is stated that the claimant had sustained fracture of both side shaft of femur, fracture of both bones right leg and fracture of both bones left leg and he also undergone surgeries for three occasions and closed it nailing for both bone left leg and ORIF for right femur and ORIF with Ilam nailing for fracture of both bones right leg were done to him. P.W.2-Doctor has also deposed that the claimant has got a permanent partial disability of 85% due to the fracture sustained by him in shaft of femur and both bones in both legs. He has also issued Ex.P.8-Disability Certificate fixing 85% of disability and Ex.P.9-X-ray film.

9. Based on the evidence of the Doctor-P.W.2 and taking into consideration the fractures sustained by the claimant and also the surgeries underwent by him, the Tribunal has fixed the permanent disability at 85% and accordingly, awarded a sum of Rs.1,70,000/- by fixing Rs.2,000/- per percentage of disability. The Tribunal has fixed the notional income of the injured/claimant as Rs.3,000/- per month. This Court is of the considered view that taking into consideration the age of the claimant and the date of the accident, the notional income is refixed as Rs.4,000/- per month.

10. In view of the fact that due to the injuries sustained in the accident, the claimant cannot do his work as before the accident and hence, the functional disability suffered by the claimant as fixed by the Tribunal at 85% is confirmed. The essential criteria fixed by the Hon'ble Apex Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC, is being satisfied and hence, multiplier method for assessment of compensation has to be adopted and hence, taking note of the age of the claimant as 20 years, 18 multiplier has to be adopted and the compensation that could be awarded to the claimant under the head of loss of earning capacity is re-assessed as under:-

$$\text{Rs.4,000/-} \times 12 \times 85/100 \times 18 = \text{Rs.7,34,400/-}.$$

11. On a perusal of the award, it is seen that the Tribunal has awarded a sum of Rs.9,000/- towards loss of earning; a sum of Rs.1,000/- towards transport to hospital and the same are confirmed. Further, the Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and the same is enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.500/- towards damages to cloth and articles and the same is enhanced to Rs.1,000/-. A sum of Rs.3,000/- towards medical expenses and a sum of Rs.25,000/- towards pain and sufferings awarded by the

Tribunal are confirmed. Since the claimant was taking treatment as an in patient for four months and 10 days, this Court awards a sum of Rs.10,000/- towards attender charges and this Court also awards a sum of Rs.10,000/- towards loss of amenities.

12. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Disability	Rs. 1,70,000/-	Nil
2.	Loss of earning capacity	Nil	Rs. 7,34,400/-
3.	Loss of earning during the period of treatment	Rs. 9,000/-	Rs. 9,000/-
4.	Transport to Hospital	Rs. 1,000/-	Rs. 1,000/-
5.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
6.	Damages to cloth and articles	Rs. 500/-	Rs. 1,000/-
7.	Medical Expenses	Rs. 3,000/-	Rs. 3,000/-
8.	Pain and Sufferings	Rs. 25,000/-	Rs. 25,000/-
9.	Attender Charges	Nil	Rs. 10,000/-
	Loss of Amenities	Nil	Rs. 10,000/-
	Total	Rs. 2,13,500/-	Rs. 8,03,400/-

13. In the result,

I. This Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.2,13,500/- to Rs.8,03,400/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The second respondent-Insurance Company is directed to deposit the enhanced amount within a period of eight weeks from the date of receipt

of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the appellant herein/claimant is permitted to withdraw the enhanced award amount with proportionate interest, less the amount already withdrawn, if any.

V. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation amount.

VI. No order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Jrl
To

1. V Judge, Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.
2. ICICI Lombard General Insurance Co. Ltd.,
Chottabai Centre, No.140, 2nd and 3rd Floor,
Nungambakkam High Road,
Nungambakkam,
Chennai - 34.

Copy to
The Section Officer,
V.R. Section, High Court,
Madras.

+1 CC to Ms.R. Sreevidya, Advocate sr 6722.

C.M.A.No.2850 of 2010

NR(CO)
SP(11/02/2020)