

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.897 of 2009

M.Balakrishnan

.. Appellant

Vs.

1.The Oriental Insurance Company Ltd.,
79, Nungambakkam High Road,
Chennai-34.

2.Suresh

3.S.S.Rajendran

4.The United India Insurance Company Ltd.,
Katcheri Road, Kallakurichi,
Fort Station Road,
Tiruchirapalli.

.... Respondents

(R2 & R3 Remained ex-parte and claim
against R4 dismissed. Hence notice
may be dispensed with for R2 to R4)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1989, against the order and decreetal order in M.C.O.P.No.158 of 2006 dated 21.11.2008 on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan
For R1 : Mr.S.K.Krishnamurthy
For R3 : Ex-parte

J U D G M E N T

This appeal is preferred by the claimant as against the award passed by the Tribunal in M.C.O.P.No.158 of 2006 on 21.11.2008.

2.The case of the appellant/claimant is that on 13.11.2005 at about 7.30 p.m, when the claimant was riding his Bajaj motorcycle, the said motor cycle was hit by a load van bearing Registration No.TN 45 M 2380, which was driven by its driver in a rash and negligent manner. Due to the said impact, the claimant/appellant fell down along with the motorcycle. At that

time, a lorry bearing Reg.No.TN 01 R 4120 which was coming from the opposite direction, hit the claimant/appellant, due to which, the claimant sustained serious injuries. Contending that the accident had happened due to the rash and negligence driving by the driver of the tempo van, the claimant has filed the claim petition before the Tribunal.

3.The Tribunal, based on the witnesses and documents available on record, has fastened the liability on the first respondent herein and arrived at the quantum of compensation at Rs.91,772/- together with interest at the rate of 7.5% per annum. Branding the award as insufficient and disproportionate, the claimant has preferred this appeal.

4.Heard both sides.

5.The learned counsel for the appellant/ claimant submitted that the award passed by the Tribunal is contrary to law and against the probabilities of the case. He further submitted that the accident took place on 13.11.2005 and hence a sum of Rs.1,000/- per percentage of disability awarded by the Tribunal is against law and the Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability. He further submitted that the doctor has assessed the disability at 47%, but the Tribunal has taken the same only at 44% without any rhyme or reason. He further submitted that in any event the quantum arrived at Tribunal is too low, which needs significant enhancement.

6.Per Contra, the learned counsel for the 1st respondent/ Insurance Company submitted that the Tribunal has awarded compensation based on the materials produced by the claimant and the respondents and hence the award passed by the Tribunal needs no interference. He further submitted that the Tribunal ought to have awarded pay and recovery, since it has not discussed in detail, whether the insurance policy was in force or not at the time of accident.

7.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8.The grounds urged by the learned counsel for the claimant / appellant are only on quantum and hence, this Court would like to deal with the quantum alone, eschewing the negligence aspect.

9.A perusal of the award of the Tribunal would go to show that the Tribunal has discussed the evidence of PW2/Doctor Mr.Saravanan in detail wherein, the doctor has issued Ex.P2/wound certificate against the claimant noting down the

following injuries:

- 1.Lacerated injury left parietal region 2x0.25x0.25cm
- 2.Abrasion right cheek 6x5cm
- 3.Abrasion right shoulder 5x3cm
- 4.Lacerated injury between 1st and 2nd toe with right side 3x2x1cm
- 5.Lacerated injury between 5th and 4th toe with 2x1x1/2cm.

10.Based on the above and based on Exs.P3,P4,P5,P6 and P7 series, the Tribunal has awarded a sum of Rs.46,772.50 under the head medical bills. Further, a sum of Rs.44,000/- was awarded towards disability and a sum of Rs.1,000/- was awarded towards transportation expenses.

11.Though the Tribunal awarded the above amounts, it has failed to consider the pecuniary and non pecuniary damages in a complete sphere.

12.The factum of accident is not in dispute. It is also not in dispute that the claimant has suffered fracture of mandible near the menti and right armus, fracture right zygomatic arch with fracture of right maxillary sinus with hamosinuses and fracture of left nasal bone.

13.When the claimant has suffered the above kind of disablement, there is a duty cast upon the Tribunal to award compensation towards pain and sufferings, attendant charges, extra nourishment and loss of amenities. Hence, this Court is of the view that if sums of Rs.20,000/-, Rs.12,000/-, Rs.10,000/-, Rs.10,000/- are awarded towards pain and sufferings, attendant charges, extra nourishment and loss of amenities respectively, that would meet the ends of justice and they are ordered accordingly. Further, the claimant was in-patient for a period of three months and hence a sum of Rs.9,000/- is awarded under the head 'loss of income', by taking the monthly income at Rs.3,000/-.

14.Since the Tribunal has awarded a sum of Rs.46,772/- towards medical expenses based on Ex.P7 series, the same is confirmed as such. Also the Tribunal has awarded Rs.44,000/- and Rs.1,000/- towards disability and transportation expenses, which in the opinion of this Court, are perfectly valid and justifiable.

15.Thus, the restructured breakup details of the total compensation reads thus:-

Head	Amount (Rs.)
Medical Expenses	46,772.00
Disability	44,000.00
Pain and suffering	20,000.00
Extra Nourishment	10,000.00
Loss of Amenities	10,000.00
Loss of Income for 3 months	9,000.00
Transportation Expenses	1,000.00
Attendant Charges	12,000.00
Total	1,52,772.00

16. In the result, the Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed, by enhancing the total compensation from Rs.91,772/- to Rs.1,52,772/-, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The first respondent is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the said amount to the Savings Bank Account of the appellant / claimant within a period of one week thereafter. It is made clear that the claimant / appellant shall pay the necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No Costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

srk / rri

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Perambalur.

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

+1 cc to Mr.S.Kamadevan Advocate sr71532

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