

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.996 of 2009

P.Kumar

... Appellant/Petitioner

..VS..

1. M.Paranthaman

2.The Oriental Insurance Co.Ltd.,
Esplanade, Chennai - 600 108.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2671 of 2004 dated 22.04.2008 on the file of V Judge, Small Causes Court, (Before the Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. A.Shanmuga Raj

For R1 : No appearance

For R2 : Mr.N.Sampath

J U D G M E N T

The case in brief, is as follows:

On 30.09.2003 at about 11.00 p.m., the appellant/claimant was proceeding in the Velachery - Tambaram Main Road by walk. At that time, the van bearing Regn.No.TN-07-X-3335, belonging to the first respondent and insured with the second respondent Insurance Company, came from behind in a rash and negligent manner and dashed against the appellant on the back side and as a result, the appellant sustained grievous injuries. He filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/- as compensation. Considering the

materials and evidence available on record, the Tribunal has arrived at the total compensation of Rs.49,000/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant / claimant has filed the present appeal, for enhancement of compensation.

3.The learned counsel for the appellant has submitted that the Tribunal has erred in awarding a sum of Rs.35,000/- towards 35% disability at the rate of Rs.1,000/- per percentage of disability; it ought to have awarded a sum of Rs.2,000/- per percentage of disability. He also submitted that in any event the award passed by the Tribunal is on the lower side.

4.Per contra, the learned counsel for the second respondent/insurance company submitted that the Tribunal has analysed in detail about the manner of accident and has also taken into account the documents produced and has awarded a compensation of Rs.49,000/- which is just, fair and reasonable. He further submitted that the award passed by the Tribunal has to be confirmed and no interference is required.

5.Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

6.The Tribunal has awarded a sum of Rs.35,000/- towards 35% disability fixed by P.W.2-Doctor as per Ex.P5-Disability Certificate. The Tribunal has also awarded a sum of Rs.5,000/- towards loss of earning, since due to the injuries he would have been prevented from doing his normal work for some weeks. The Tribunal has also awarded a sum of Rs.1,000/- towards transport to hospital, Rs.1,000/- towards extra nourishment, Rs.2,000/- towards medical expenses and Rs.5,000/- towards pain and suffering. Considering the nature of injuries suffered by the claimant, it would be appropriate to award a sum of Rs.5,000/- towards pain and suffering, in addition to the amount awarded by the Tribunal towards this head. Further, it would also be appropriate to award a sum of Rs.1,000/- towards damage to clothes. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Disability	35,000/-
Loss of earning	5,000/-
Transport to hospital	1,000/-
Extra nourishment	1,000/-
Medical expenses	2,000/-
Pain and suffering	10,000/-
Damages to clothes	1,000/-

TOTAL.....	55,000/- =====

Thus, the appellant / claimant is entitled to the modified compensation of Rs.55,000/- with interest at the rate of 7.5% per annum from the date of petition.

7.In the result, the appeal is partly allowed by enhancing the quantum of compensation from Rs.49,000/- to Rs.55,000/-. It is made clear that only for the compensation of Rs.49,000/- 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.6,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

8.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, with interest and costs, less 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 appellant / claimant shall withdraw the same, on making proper application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

srk / vv

To
1.The V Judge, Small Causes Court,
The Motor Accidents Claims Tribunal Chennai.

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

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.67372

CMA.No.996 of 2009

EV(CO)
CB(22/07/2020)