

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.03.2019

Judgment Pronounced on : 15.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1569 of 2011

Daniel Sundar Raj

... Appellant

Versus

1.Chandran

2.Thangavel

3.The National Insurance Company Ltd.,
78, Thirvenkadasamy Chetty Street,
Erode - 1.

... Respondents

[R1 & R2 set ex-parte, hence, notice are dispensed with]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Judgment and Decree dated 22.10.2010 made in MCOP.No.43 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Erode.

For Appellant : Mrs.R.Shase
for M/s.R.Marudhachalmurthy &
Mr.M.Guruprasad

For Respondents : Mr.G.Udaya sankar (for R3)
: Exparte- R1 & R2.

JUDGMENT

The claimant is the appellant herein, who preferred this appeal for enhancement of compensation.

2.The claim petition is filed alleging that on 26.02.2008, at about 2.30 pm., when the claimant was riding his Yamaha Libero Motorcycle bearing Registration No.TN-33-AE-6320 from East to West direction, on the left extreme side of the Erode to Karur by-pass road, near Amman Complex in a normal speed, a Minidor Van bearing Registration No.TN-33-AE-9436, owned by the

second respondent and insured with the third respondent, which was driven by its driver/first respondent came in the same direction, in a rash and negligent manner and dashed against the claimant's motorcycle. Due to the said impact, the claimant sustained grievous injuries, fracture on his right leg (femur, patella and tibia), fracture on his spine, contusion on C2 vertebra, cut injuries and lacerated injuries all over the body. Therefore, the claimant filed a claim petition in MCOP.No.43 of 2009, claiming a sum of Rs.34,15,924/- as compensation, which was restricted to Rs.20 lakhs.

3.Before the Tribunal, the claimant examined himself as PW.1 and five other witnesses were examined as PWs.2 to 6 and as many as forty five documents were marked as Exs.A1 to A45. On the respondents' side, one Chandran was examined as RW.1, but no document was marked.

4.After analysing the oral and documentary evidence adduced, the Tribunal held that the respondents are liable to pay the compensation of Rs.8,03,914/-.

5.Not being satisfied with the compensation amount awarded by the Tribunal, the claimant has come up with the present appeal, for enhancement of compensation.

6.The learned counsel appearing for the claimant/appellant submitted that at the time of accident, the injured was working as an Assistant Educational Officer in Elementary School, Modakurichi, and was earning of Rs.17,882/- per month. He was aged 35 years. Due to the said accident, he sustained multiple injuries. The claimant took treatment as an in-patient for 64 days and he could not continue his job for a period of 518 days, since he underwent surgery on 29.02.2008 on the neck and a wire was fixed on the outer side of the leg. Thereafter, on 03.03.2008, he underwent surgery to rectify the bone. These two surgeries were done at two different hospitals. Hence, as per the medical records, PW.2 & PW.3/Doctors, have examined and assessed the claimant's disability at 65%, which was marked as Ex.P39/Permanent disability certificate.

7.The learned counsel appearing for the third respondent/Insurance company has submitted that after taking rest at home, the claimant/appellant has rejoined his duty in the same post as Assistant Educational Officer. Further, he stated that the claimant's disability is not functional disability and it does not warrant adopting multiplier method.

8.On a perusal of the medical reports i.e., Exs.A19, 20, 21, 22, 23/Discharge summaries and Ex.A24/Follow up summary, it is seen that the claimant/appellant has suffered vertical suture

lacerated wound over the frontal region of the scalp, fracture on right leg and spine and C2 vertebra. It is not in dispute that though the claimant/ PW.1 sustained grievous injuries in the said accident, now he is continuing his Government Job and earning as before.

9.Thus, this Court is of the opinion that the loss of earning power of the claimant was not affected and his permanent disability cannot be considered as functional disability. However, the Tribunal has rightly considered the claimant's salary certificate/Ex.A33 and Ex.A37, the Certificate for the leave taken by the claimant and found that the claimant would be paid salary of Rs.12,642/- per month on promotion. For the leave of 518 days, which the claimant had availed, the Tribunal awarded a sum of Rs.1,06,759/-.

10.Considering Ex.A6/wound certificate, the Tribunal awarded a sum of Rs.1,30,000/- for the various injuries suffered by the claimant. Considering the Exs.A8 to A13, various bills issued by two different hospitals, the Tribunal awarded a sum of Rs.3,60,235/-. As claimed under Ex.A17/blood bank bill a sum of Rs.8,800/- was granted. Under Exs.A30 to A32, which are medical bills, even though the claimant claimed a sum of Rs.1,64,738.73/-, the Tribunal awarded a sum of Rs.80,000/-. For the treatment taken in the Ganga Hospital, Coimbatore, as can be seen from the Ex.A34, a sum of Rs.27,760/- was awarded. The medical bill/Ex.A36, which was to the tune of Rs.7,679/- was allowed to the extent of Rs.5,000/-. As per Ex.40/Xerox bill a sum of Rs.360/- was granted and other necessary heads are also awarded. Apart from the above amounts, the Tribunal granted a sum of Rs.50,000/- towards pain and suffering and mental agony. Thus, in all, the Tribunal awarded a sum of Rs.8,03,914/- as compensation to the claimant.

11.A perusal of Ex.A24/Follow up summary, shows that the claimant took physiotherapy treatment and he also produced the physiotherapy bills before the Tribunal, which was reflected under Ex.A14/physiotherapist fees receipt, for which, he spent a sum of Rs.28,650/- to the said treatment. Taking into consideration, the medical evidence in the form of Physiotherapy bill/Ex.A14, the Tribunal granted a sum of Rs.20,000/-. This Court is of the considered view that a sum of Rs.28,650/-, which has been incurred by the claimant for Physiotherapy is to be paid in full. Moreover, he also spent a sum of Rs.17,832/- for Ambulance charges and that bill was marked as Ex.A15 and the same is hereby granted in full. As per Ex.36/medical bills a sum of Rs.7,679/- was claimed, but the Tribunal granted a sum of Rs.5,000/- and the same is hereby granted in full. The Tribunal did not consider the CT Scan bill/Ex.A16 and Urology Clinic Lab bill/Ex.A18, for which the claimant spent a sum of Rs.11,750/-

and Rs.2,500/- respectively and the same are hereby granted in full.

12.Taking into consideration, the fact that for 64 days, the claimant took treatment as an in-patient, a sum of Rs.20,000/- is awarded towards Attender charges; an additional sum of Rs.30,000/- towards pain and suffering; a sum of Rs.25,000/- towards loss of amenities and a sum of Rs.25,000/- towards extra-nourishment to the claimant. Expect these modifications, the compensation awarded by the Tribunal under other heads remains in tact.

13.In view of the above, the total compensation awarded by the Tribunal to the tune of Rs.8,03,914/- is enhanced by making the additions as aforesaid. The total enhanced compensation amount is determined as follows:-

Description	Amount awarded by this Court
Compensation awarded by the Tribunal (which is approved by this Court)	Rs.8,03,914/-
Pain and sufferings (in addition)	Rs.30,000/-
Loss of amenities (in addition)	Rs.25,000/-
Attender charges (in addition)	Rs.20,000/-
Extra-nourishment (in addition)	Rs.25,000/-
Ambulance charges (in addition)	Rs.2,832/-
Physiotherapy bill (in addition)	Rs.8,650/-
Ex.A36/medical bill (in addition)	Rs.2,679/-
Ex.A16/CT Scan bill	Rs.11,750/-
Ex.A18/Urology Clinic Lab bill	Rs.2,500/-
Total	Rs.9,32,325/-

14.In the result,

(i) This Civil Miscellaneous Appeal is allowed by enhancing the compensation award amount from Rs.8,03,914/- to Rs.9,32,325/- along with interest 7.5% per annum.

(ii) The Insurance Company is directed to deposit the enhanced compensation amount of Rs.9,32,325/-, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iii) On such deposit being made, the claimant is permitted to withdraw the entire award amount as determined in this appeal, less the amount already withdrawn, if any.

(iv) The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(v) There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

klr

To

1. The Motor Accident Claims Tribunal,
I Additional District Judge, Erode.

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

+1 CC to Mr.M.Guruprasad, Advocate sr 60329.

+1 CC to Mr.G.Udaya Sankar, Advocate sr 60019.

C.M.A.No.1569 of 2011

SS(CO)
SP(04/06/2020)

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