

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.03.2019

Pronounced on :27.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1050 of 2012

B.Sadayan Chettiar ... Appellant/ Petitioner

Vs.

1.R.Latha

(set exparte before the Tribunal)

2.ICICI Lambord General Insurance Company Ltd.,

"Arihant Plaza"

No.84/85, Walltax Road,

Chennai - 600 003.

... Respondent/ Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.01.2012 made in M.C.O.P.No.4510 of 2009 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mrs.P.T.Saleem Fathima

For R1 : Exparte before the Tribunal

For R2 :Mrs.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 23.01.2012 made in M.C.O.P.No.4510 of 2009 on the file of the V Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

2. The averments made in the claim petition in brief are as follows:-

On 01.12.2009 at about 6.00 hours, while the claimant was standing on the eastern side of Jawaharlal 100 feet road at Ekkatuthangal opposite to Bharat State Bank, the

Motor-cycle bearing Registration No.TN 09 AE 9820 owned by the 1st respondent and insured with the 2nd respondent vide Policy No.3005/2010043191/B/0000003909 valid from 13.10.2009 to 12.10.2010 being driven by its driver in a rash and negligent manner dashed against the claimant due to which, he sustained injuries for which the respondents are jointly and severally liable to pay the compensation. Having not satisfied with the award of compensation by the Tribunal, the claimant has preferred this appeal.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.2,35,000/- with interest at 7.5% per annum.

4. During the Trial, the claimant/appellant was examined himself as P.W.1 and Doctor was examined as P.W.2 and Exhibits P1 to P7 were marked. On behalf of the respondent side, no oral and documentary evidence were adduced before the Tribunal.

5. On the point of rash and negligent part of the driver of the first respondent, the same is not disputed and hence, the same is hereby confirmed.

6. On the point of quantum of compensation, both the parties are heard.

7. It is seen from the Exhibit P3-Discharge summary that the injured was admitted in St.Thomas Hospital, Chennai from 01.12.2009 and discharged on 05.12.2009. It is also conspicuous from Ex.P6 Disability Certificate that the appellant/claimant had suffered fracture of both bones right leg upper 1/3rd and surgery was performed with implanataions, fractured bones are malunited, shortening of 1cm right leg, movements are restricted and the appellant/claimant has got difficulty in using Indian toilet or squatting on the floor, walking, standing and climbing the stairs and doing his mason work. It is supported by Exhibit P7. Considering the nature of injury sustained by the appellant/claimant, the assessment of disability by P.W.2.

8. Considering the nature of the injury as spoken to P.W.2 Doctor which is duly corroborated by Exhibit P3-Discharge summary and Exhibit P7 X-ray, this Court is of the considered view that the partial permanent disability suffered by the claimant/appellant as fixed at 20% and the compensation at the rate of Rs.1,500/- was awarded Rs.30,000/- (20x1500/- =Rs.30,000/-)

9. Taking note of the injuries sustained by the claimant, it could be said that the appellant/claimant would not have

attended duties for atleast 6 months. Accordingly, the 'loss of income' during the period of treatment has been enhanced from Rs.18,000/- to Rs. 36,000/- (6000x6).

10. Taking into consideration the nature of injury sustained by the appellant/claimant, a sum of Rs.3,000/- awarded by the Tribunal towards 'transport to hospital' is enhanced to Rs.10,000/-, a sum of Rs.5,000/- towards 'extra nourishment' is enhanced to Rs.10,000/-, a sum of Rs.500/- towards 'clothes' is enhanced to Rs.1000/-, a sum of Rs.15,000/- towards 'attender charges' is enhanced to Rs.20,000/-, a sum of Rs.20,000/- towards 'loss of amenities' is enhanced to Rs.25,000/-, a sum of Rs.25,000/- towards 'pain and sufferings' is enhanced to Rs.30,000/-, a sum of Rs.50,000/- towards 'loss of earning capacity' is reduced to Rs.30,000/- and a sum of Rs.58,415/- towards 'medical bills' is confirmed. Hence, total compensation is hereby enhanced to Rs.2,50,415/- from Rs.2,35,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Permanent disability	Rs.40,000/-	---
Partial permanent disability	----	Rs.30,000/-
Loss of income during treatment period	Rs.18,000/-	Rs.36,000/-
Transport to Hospital	Rs.3,000/-	Rs.10,000/-
Extra nourishment	Rs.5,000/-	Rs.10,000/-
Clothes	Rs.500/-	Rs.1,000/-
Attender charges	Rs.15,000/-	Rs.20,000/-
Loss of amenities	Rs.20,000/-	Rs.25,000/-
Medical bills	Rs.58,415/-	Rs.58,415/-
Pain and sufferings	Rs.25,000/-	Rs.30,000/-
Loss of earning capacity	Rs.50,000/-	Rs.30,000/-

Heads	Trial Court	High Court
Total	Rs.2,34,915/- (Rounded off to Rs.2,35,000/-)	Rs.2,50,415/-

10. The learned counsel for the second respondent/Insurance Company stated that the entire award amount has already been deposited the amount awarded by the Tribunal and the Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment.

11. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly-allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The V Judge, Motor Accidents Claims Tribunal
(Court of Small Causes), Chennai.
2. The Section Officer,
V.R.Section, High Court, Chennai-104.

+1cc to Mr.M.Swamikannu , Advocate SR.No. 29046

+1cc to Ms.R.Sreevidhya , Advocate SR.No. 30400

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A.SK(19/11/2019)