

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2019
CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1678 of 2011

Mr.G.Venkatesh
represented by Power Agent
Mrs.Rajivenkatesh.

... Appellant/ Claimant

Vs.

1. V.Saravanakumar
2. R.Thankaran
3. M/s New India Assurance Company Limited,
106/1-6 Dharapuram Road,
Oddanchathram,
Dindigul.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.1811 of 2004 by the Additional District Judge, Motor Vehicle Accidents Claims Tribunal, (Fast Track Court No.I), Chennai, dated 26.02.2010.

For Appellant : Mr. T.Thiyagarajan

For 3rd Respondent : Mr.N.Krishnamoorthy

For 1st and
2nd respondent : No appearance

J U D G M E N T

The appellant is the claimant in MCOP No.1811 of 2004 on the file of the Additional District Judge, Motor Vehicle Accident Claims Tribunal, Fast Track Court No.I, Chennai and he filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 21.10.2003.

2. The brief case of the appellants/claimants is as follows. On 21.10.2003, the claimant was travelling as a passenger in a car bearing registration No.TN-10-977 and he was proceeding towards Chennai. At about 4.00 p.m. a speeding van bearing registration No.TN-57-X-1717, belonging to the first

respondent, hit the car, as a result of which, the appellant/claimant sustained injuries all over his body and he was immediately rushed to Malar Hospital at Adayar. According to the claimant, the rash and negligent driving of the driver (2nd respondent) of the van bearing registration No.TN-57-X-1717 was the cause of the accident and that since the first respondent insured his vehicle with the 3rd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.1, Chennai, after analysing the evidence on record, awarded a compensation of Rs.3,32,737/- together with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

4. Mr.T.Thiyagarajan, learned counsel appearing for the appellant would contend that the appellant/claimant sustained a fracture on his right leg and an operation was performed on him and his right leg is shortened by one inch. However, the tribunal has awarded a very meagre amount of Rs.60,000/- for partial permanent disability. He would further contend that though the appellant was hospitalized for a period of 12 days and thereafter took treatment as an outpatient, no amount was awarded towards attender's charges and loss of amenities. His further contention is that the amount awarded under various heads by the tribunal has got to be enhanced.

5. Mr. N.Krishnamoorthy, learned counsel appearing for the 3rd respondent would contend that the tribunal has awarded a just compensation by taking into consideration the various aspects and therefore, it need not be disturbed at this juncture.

6. A perusal of the records shows that the appellant/claimant sustained the following injuries.

Left upper limb : Clinically fracture shaft left humerus L/3
Active finger movements present.
Distal pulses felt.

Right leg and Knee : Haemarthrosis +
Diffuse swelling tenderness upper
3rd of leg present
ROM - Painful
No distal NV deficit.

Dr.N.Saichandran (PW2) has issued a disability certificate (Ex.P21) by observing that the partial permanent disability suffered by the claimant is 50%. Also, Dr. Saravanabavanantham

(PW3) has issued a disability certificate (Ex.P23) contending that the appellant sustained fracture on his frontal sinus, nasal bone, facial laceration and head injury and according to him, the partial permanent disability is 20%. Therefore, the total partial permanent disability assessed by PW2 and PW3 is 70%. However, the tribunal has fixed the partial permanent disability as 60%, without assigning any proper reason, especially when PW2 and PW3 have given cogent reasons for assessing the disability as 50% and 20% respectively. Thus, partial permanent disability suffered by the claimant is fixed as 70%. The tribunal was right in awarding Rs.1,000/- per percentage, since there is no functional disability. Therefore, a sum of Rs.70,000/- (70x1000=70,000) is awarded towards partial permanent disability suffered by the appellant/claimant.

7. As far as the other heads are concerned, the award passed by the tribunal is extracted hereunder.

Sl.No	Heads	Amount
1	Transportation	3,000
2	Extra Nourishment	2,500
3	Loss of earning	30,000
4	Damages to clothes	300
5	Medical bills	2,26,937
6	Pain and sufferings	10,000
7	partial permanent disability	60,000
	Total	3,32,737

It is pertinent to point out that no amount was awarded towards attender's charges and loss of amenities, especially when the appellant took treatment in hospital for 12 days. The medical records also reveals that a steel plate was implanted in his left arm and he was unable to carry heavy objects. In the facts and circumstances, a sum of Rs.2,000/- is awarded towards "attender's charges" and a sum of Rs.10,000/- towards loss amenities.

8. The tribunal while awarding compensation under various heads, has awarded sum of Rs.30,000/- towards "loss of income". A perusal of Form 32 (Ex.P15) and income tax returns (Ex.P16 to Ex.P18) shows that the monthly income of the appellant on the date of accident was Rs.12,500/-. As already observed, the appellant sustained fracture on his right arm and a steel plate was also fixed. In the facts and circumstances, the appellant would not have been in a position to attend to

his regular work atleast for 6 months. Thus, a sum of Rs.75,000/- (12,500 x 6 = 75,000) is awarded towards loss of income. The revised award passed under various heads by this court is extracted hereunder.

Sl.No	Heads	Amount
1	Transportation	5,000
2	Extra Nourishment	5,000
3	Loss of income	75,000
4	Damages to clothes	1,000
5	Medical bills	2,26,937
6	Pain and sufferings	15,000
7	partial permanent disability	70,000
8	Attender's charges	2,000
9	Loss of amenities	10,000
	Tot	4,09,937
al		

9. In the result,

i) The appeal is allowed in part. No costs. The quantum of compensation awarded by the tribunal is enhanced to Rs.4,09,937/- from Rs.3,32,737/-.

ii) The appellant/claimant is entitled to a sum of Rs.4,09,937/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

iii) The 3rd respondent/insurance company is directed to deposit the enhanced compensation of Rs.4,09,937/- along with interest at the rate of 7.5% per annum, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) On such deposit being made by the Insurance company, the claimant is entitled to withdraw the entire amount, after following due process of law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court I,
Chennai.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.T.Thiyagarajan, Advocate, Sr.No. 5375

+1 cc to M/s.M.Krishnamoorthy, Advocate, Sr.No. 5178

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KAN(CO)
CSL/30.05.2019



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