

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1166 of 2012

S.Rajavel

...Appellant/Claimant

Vs.

1.A.Dharmaraj

(R1 was set exparte before the Tribunal)

2.United India Insurance Co. Ltd.,

Chander Plaza, No.48, Arcot Road,

Saligramam,

Chennai-600 093

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.07.2011 in M.C.O.P.No. 315 of 2008, on the file of the Motor Accidents Claims Tribunal, the II Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Arundattan
for M/s.C&K Law Firm

For Respondents : Mr.G.Udayasankar for R2
R1 - exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.315 of 2008, on the file of the Motor Accidents Claims Tribunal, the II Judge, Small Causes Court, Chennai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.8,25,000/- for the injuries sustained by him in a road accident that took place on 19.12.2007.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 36 years on the date of the accident. He was working as an accountant in Power loom weaver, earning a sum of Rs.6,000/- per month.

(ii) On 19.12.2007, at about 15.00 hours., the appellant/

claimant was riding a motor-cycle bearing Registration No.TN 09 AM 5394 along the Guindy Estate Road from East to West direction. At that time, an auto bearing Registration No.TN 09 M 7081 came from opposite direction in a rash and negligent manner and dashed against the appellant/claimant. Thereby, the claimant had sustained grievous injuries. The accident occurred only due to the rash and negligent driving of the driver of the auto. The first respondent being the owner and the second respondent being the insurer of the vehicle, both are jointly and severally liable to pay compensation to the claimant. Due to the said accident, the appellant/claimant sustained (i) multiple fractures over right leg knee ankle and foot (ii) fracture over right hand (iii) serious head injury (iv) contusion over left leg (v) severe injuries over face and chest and multiple injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to M/s.Balaji Hospital, Guindy, Chennai as in-patient from 19.12.2007 to 28.12.2007. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/claimant.

3. The owner of the motorcycle bearing Registration No. TN 09 AM 5394, has not appeared before the Tribunal, and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.P1 to Ex.P14 were marked. On the side of the respondents, no evidences were adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.3,00,000/- together with interest at the rate of 7.5% per annum and directed the first and second respondents therein to jointly and severally pay the said compensation to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. After hearing both the parties and perusing the materials available on records, it is seen that the rash and negligence fixed on the part of the rider of the said motorcycle is not in dispute and the same is hereby confirmed.

5. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered (i) multiple fractures over right leg knee ankle and foot (ii) fracture over right hand (iii) serious head injury (iv) contusion over left leg (v) severe injuries over face and chest and multiple injuries all

over the body. He would contend that the appellant/claimant was admitted as an inpatient in the Balaji Hospital, Guindy, Chennai from 19.12.2007 to 28.12.2007 and has also underwent a surgery on 19.12.2007. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

6. The learned counsel appearing for the United India Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable and they need not be disturbed, at this juncture.

7. Dr.J.R.R.Thiagarajan (PW2), had deposed that, after the surgery, the appellant/claimant has sustained fracture of both bones in the right leg and the same is malunited. Plate is fixed in the fibula bone. Wire is fixed in the tibia bone. Further, he underwent bone grafting. The implants are not yet removed. The muscles are hardened. The claimant can fold his right upto 60 degrees. The ankle movement is also reduced by 40 degrees. The claimant is having difficulty in squatting, walking fastly and driving the vehicle. The claimant is limping. P.W.2 has also assessed the 'disability' suffered by the appellant/claimant as 15%. However, the Tribunal based on PW1, PW2, Lab reports (Ex.P4) and disability certificate (Ex.P13), fixed the disability as 50%. The Tribunal in the absence of any evidence to prove the income of the injured, fixed the same as Rs.2,000/- per month to arrive at the compensation and awarded a sum of Rs.1,00,000/- for the disability suffered by the appellant/claimant and the same is appears to be reasonable.

8. Taking note of the injuries and also the date of the accident, the medical bills for Rs.1,44,648.50 ps and Ex.P6 cost of implant bills for Rs.14,210/- to show the expenses for his medical treatment. The total expenses incurred by the claimant was Rs.1,58,858.50ps. The claimant has also admitted this fact in his evidence, that he had taken treatment in the Sri Balaji Hospital. Hence, as per Exhibit P5 and Exhibit P6 medical expenses is rounded as to Rs.1,59,000/- before the Tribunal and the same is confirmed.

9. For loss of income during the treatment, taking the notional monthly income at Rs.4,500/- only for 3 months is awarded by the Tribunal. Taking note of the injuries and the period of treatment is taken, the same is enhanced for 6 months and accordingly, Rs.27,000/- (Rs.4500x6) is awarded towards 'loss of income'.

10. For 'transportation' this Court enhanced from Rs.1,500/- to Rs.10,000/-, for 'extra nourishment' this Court enhanced from Rs.5,000/- to Rs.10,000/-, for 'pain and sufferings' this Court enhanced from Rs.20,000/- to Rs.25,000/-, for 'extra nourishment' this Court enhanced from Rs.5,000/- to Rs.10,000/-. However, after going through Exhibit P2 and Exhibit P3 Discharge summary, in the interest of justice, Rs.10,000/- is hereby awarded for 'attender charges'. The appellant/claimant is entitled to a sum of Rs.15,000/- towards 'loss of amenities'.

11. Accordingly, the award of the Tribunal in M.C.O.P.No. 315 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs.1,00,000/-	Rs.1,00,000/-
2.	Loss of income during treatment	Rs. 13,500/-	Rs. 27,000/-
3.	Transport charges	Rs. 1,500/-	Rs. 10,000/-
4.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
5.	Damage to Clothes and articles	Rs. 1,000/-	Rs. 1,000/-
6.	Medical expenses	Rs.1,59,000/-	Rs.1,59,000/-
7.	Pain and sufferings	Rs. 20,000/-	Rs. 25,000/-
8.	Loss of amenities	----	Rs. 15,000/-
9.	Attender charges	----	Rs. 10,000/-
	Total	Rs.3,00,000/-	Rs.3,57,000/-

The compensation awarded by the Tribunal is enhanced from Rs.3,00,000/- to Rs.3,57,000/- which shall carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,00,000/- to Rs.3,57,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/United India Insurance Company Limited is directed to deposited the enhanced compensation amount awarded by this court, i.e., Rs.3,57,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 315 of 2008, dated 28.07.2011, on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1 cc to Mr.C.Munusamy, Advocate, Sr.No. 27945

+1 cc to Mr.G.Udayashankar, Advocate, Sr.No. 28999

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gj(co)
CSL/22.07.2019

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