

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1179 of 2012

K.Duraimurugan

...Appellant/Claimant

Vs.

1.Mahaveer Chand Jamad

(R1 exparte before the Tribunal)

2.United India Insurance Co. Ltd.,

A.R.Complex, 2nd Floor,
No.1090, Poonamallee High Road,
Chennai - 600 084.

(Now operating from Silingi Buildings,
No.134, Greams Road, Chennai-600
006. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.08.2011, in M.C.O.P.No. 1976 of 2008, on the file of the Motor Accidents Claims Tribunal, the Additional District Judge, Fast Track Court No.II, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents :Mr.C.Paranthaman for R2

R1 - exparte before the Tribunal

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 1976 of 2008, on the file of the Motor Accidents Claims Tribunal, the Additional District Judge, Fast Track Court No.II, Chennai. He has filed the above said claim petition under Sections 140, 141, 142 and 166 of the Motor Vehicles Act and Rule 3 & 24(1) of the Motor Accidents Claims Tribunal Rules, 1988, seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 05.02.2008.

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

(i) The appellant/claimant was aged 20 years on the date of the accident. He was working as Helper in Hardware Shop, earning a sum of Rs.6,000/- per month.

(ii) On 26.12.2008, at about 19-00 hours., the appellant/claimant was riding his motorcycle bearing Registration No. TN 04 U 6037 along with his friend B.Devaraj on the pillion and were proceeding from East to West on G.N.T.Road (in front of Nadi Company), Chennai, While so, the driver of Tanker lorry bearing Registration No.TN 21 F 5955 employed under the first respondent came from behind on the said road in a rash and negligent manner and dashed against the motor-cycle and causing grievous injuries to the appellant/claimant besides injuries to the pillion rider and damages to the motor-cycle. Thereby, the appellant/claimant sustained grievous injury. Due to the said accident, the appellant/claimant sustained fracture of right leg both bones, bruises and lacerations and injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to Government Stanley Hospital, Chennai. 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 04 U 6037, was absent 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.P6 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.79,000/- 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 contend that, in the above said accident, the appellant/claimant has suffered fracture of right leg both bones, bruises and lacerations and injuries all over the body. He would contend that the appellant/claimant was admitted as an inpatient in the Government Stanley Hospital, Chennai. 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. After hearing both sides and taking note of the fact that Exhibit P5 Disability Certificate and also the evidence of the Doctor P.W.2 Sai Chandran, the "disability" has been fixed at 40% and accordingly Rs.60,000/- (Rs.1,500/-x40%) has been awarded before the Tribunal. Taking into consideration the disability suffered by the claimant, this Court enhances the compensation for 'disability' for 40% and accordingly, awards an amount of Rs.80,000/- (Rs.2,000/-x40%).

8. Taking note of the injuries sustained by the claimant, it could be said that the appellant/claimant would not have attended duties for 3 months. Accordingly, the 'loss of income' during the period of treatment has been enhanced from Rs.9,000/- to Rs.13,500/- (4,500x3).

9. However, after going through Exhibit P2 Discharge summary and taking into consideration of period of treatment as in-patient in hospital and in the interest of justice, Rs.10,000/- is hereby awarded for 'attender charges'.

10. Furthermore, the Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, for transportation and for extra nourishment. Taking into consideration, the nature of injuries and he was taking treatment as in-patient for more than 15 days, this Court is enhanced for a sum of Rs.10,000/- each under the heads of 'Transport charges', and 'Extra nourishment' and under the head 'pain and sufferings' this Court enhances to Rs.20,000/- from Rs.10,000/-. The appellant/claimant is entitled to a sum of Rs.10,000/- towards 'loss of amenities'.

11. Accordingly, the award of the Tribunal in M.C.O.P.No. 1976 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	permanent disability	Rs. 60,000/-	Rs. 80,000/-
2.	Loss of earning for 3 months (Rs.4500/- x3)	Rs. 9,000/-	Rs. 13,500/-
3.	Pain and sufferings, transporation and nutritious food	Rs. 10,000/-	----
4.	Pain and sufferings	----	Rs. 20,000/-
5.	Attender charges	----	Rs. 10,000/-
6.	Transport to hospital	----	Rs. 10,000/-
7.	Extra nourishment	----	Rs. 10,000/-
8.	Loss of amenities	----	Rs. 10,000/-
	Total	Rs. 79,000/-	Rs.1,53,500/-

The compensation awarded by the Tribunal is enhanced from Rs.79,000/- to Rs.1,53,500/- 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.79,000/- to Rs.1,53,500/-.

(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.1,53,500/- (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. 1976 of 2008, dated 08.08.2011 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.II, 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 V)

//True Copy//

Sub Assistant Registrar

To

The (Motor Accidents Claims Tribunal),
Additional District Judge,
Fast Track Court No.II, Chennai.

+1c to Mr.G.Balaji Prasad, Advocate Sr.28744

+2cc to Mr.C.Paranthaman, Advocate Sr.28245

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C.M.A.No.1179 of 2012

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srg 31/07/2019

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