

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.1787 of 2012

M.Thirunavukarasu

...Appellant/ Petitioner

Vs.

1.V.Prabhakar

2.IFFCO TOKIO GENERAL INSURANCE CO., LTD.,

New No.28, 2nd Floor,

North Usman Road,

T.Nagar,

Chennai- 600 017

... Respondents/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.07.2011, in M.C.O.P.No. 3957 of 2008, on the file of the Motor Accidents Claims Tribunal, the V Judge, Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondents : Mr.N.Vijayaraghavan for R2

R1 - exparte before the Tribunal

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 3957 of 2008 on the file of the Motor Accidents Claims Tribunal, the V Judge, Court of Small Causes, Chennai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 11.09.2008.

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

(i) The appellant/claimant was aged 57 years on the date of the accident. He was working as V Guard Distributor, Lakshmi Agencies, earning a sum of Rs.25,000/- per month.

(ii) On 11.09.2008, at about 20.30 hours., when the appellant/ claimant was riding his motor cycle on his side of the Lakshmi Theatre Road, Chennai from West to East direction, at that time, a Car bearing Registration No. TN 10 U 6303, ridden by its rider in a rash and negligent manner, came from the opposite direction and dashed against the appellant/claimant's motor-cycle. Due to the said accident,

the appellant/claimant sustained (i) severe injury in head (ii) communitated fracture tibial condyle in left knee, (iii) lose of bone fragment inter condyle in left knee and multiple injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to V.S. Hospital, Erode. The rash and negligent riding of the rider of the above said car 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 car bearing Registration No. TN 10 U 6303, was absent before the Tribunal, and therefore, he was set ex-parte. The Iffco Tokio General 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 evidence was adduced. After going through the oral and documentary evidence adduced before it, the Tribunal awarded a sum of Rs.1,92,000/- together with interest at the rate of 7.5% per annum from the date of filing of petition i.e., 17.09.2008 till the date of deposit within one month from this date and is payable by the second respondent on behalf of the first respondent. 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 car 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 (i) severe injury in head (ii) communitated fracture tibial condyle in left knee, (iii) lose of bone fragment inter condyle in left knee and multiple injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the V.S Hospital, Egmore, Chennai from 12.09.2008 to 17.09.2008 and has also underwent a surgery on 13.09.2008 and 15.09.2008 and ORIF and Arthoroscopy were done. 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 second respondent-Iffco Tokio General 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 may be modified. The Insurance Company also disputed the age, avocation and

monthly income of the injured claimant before the Tribunal and contended that the quantum of compensation claimed by the injured claimant is highly excessive.

7. Dr.N.Saichandran (PW2), has deposed that after the surgery, he has assessed the 'disability' suffered by the appellant/claimant as 45%. However, the Tribunal based on the evidence of PW1, PW2 and the Disability Certificate (Ex.P5) and medical bills (Ex.P3), fixed the disability as 45%. The Tribunal, in the absence of any evidence to prove the income of the injured, fixed the same at Rs.67,500/- (1500x45%) and accordingly, awarded a sum of Rs.67,500/- for the 'permanent disability' suffered by the appellant/claimant.

8. Taking into consideration the deposition of Dr.N.Saichandran (PW2), the injuries sustained by the appellant/ claimant and also the surgery underwent by him, as could be seen from the medical bills (Ex.P3), this Court is of the considered opinion that the disability sustained by the appellant/claimant should be fixed at 45%. Since, the accident is of the year 2008, awarding a sum of Rs.2,000/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.90,000/- (2,000x45%) is awarded towards 'permanent disability'.

9. It is seen from the records that Exhibit P2-discharge summary shows that the claimant was admitted as an in-patient in V.S.Hospitals, Egmore, Chennai from 13.09.2008 to 15.09.2008. Therefore, the Tribunal has awarded a sum of Rs.28,000/- under the head of 'loss of earning' and the same is enhanced to Rs.42,000/-

10. Since, the appellant/claimant was admitted as an in-patient from 12.09.2008 to 17.09.2008 in V.S Hospital, Egmore, Chennai and since, he had also underwent a surgeries on 13.09.2008 and 15.09.2008 the sum of Rs.20,000/- granted by the Tribunal under the head 'pain and sufferings' is enhanced to Rs.30,000/- and towards 'extra nourishment' and 'damage to clothing & articles', a sum of Rs.10,000/- and Rs.1,000/- respectively are hereby confirmed. A sum of Rs.5,000/- granted by the Tribunal under the head 'transportation' is enhanced to Rs.10,000/-. Since, the appellant/claimant was admitted as an in-patient for 6 days, a sum of Rs.10,000/- is awarded towards the 'attender's charges'. The Tribunal has not granted any amount towards 'future medical expenses' and 'loss of amenities' and therefore, a sum of Rs.15,000/-, and Rs.10,000/- are awarded respectively. Based upon the evidence of medical bills (Ex.P3), the Tribunal has granted a sum of Rs.60,500/- to the appellant/claimant towards 'medical expenses' and the same is hereby confirmed.

11. Accordingly, the award of the Tribunal in M.C.O.P.No. 3957 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 28,000/-	Rs. 42,000/-
2.	Transport to Hospital	Rs. 5,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
4.	Damage to clothing & Articles	Rs. 1,000/-	Rs. 1,000/-
5.	Medical Expenses	Rs. 60,500/-	Rs. 60,500/-
6.	Attender charges	----	Rs. 10,000/-
7.	Loss of amenities	----	Rs. 10,000/-
8.	Future Medical expenses	----	Rs. 15,000/-
9.	Pain and sufferings	Rs. 20,000/-	Rs. 30,000/-
10.	Permanent disability	Rs. 67,500/-	Rs. 90,000/-
	Total	Rs.1,92,000/-	Rs.2,78,500/-

The compensation awarded by the Tribunal is enhanced from Rs.1,92,000/- to Rs.2,78,500/- 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.1,92,000/- to Rs.2,78,500/-.

(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/Iffco Tokio General Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.2,78,500/-

(to be deposited in the court's account 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. 3957 of 2008, dated 22.07.2011, on the file of the Motor Accidents Claims Tribunal, V Judge, Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of this judgment.

(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)

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Sub Assistant Registrar

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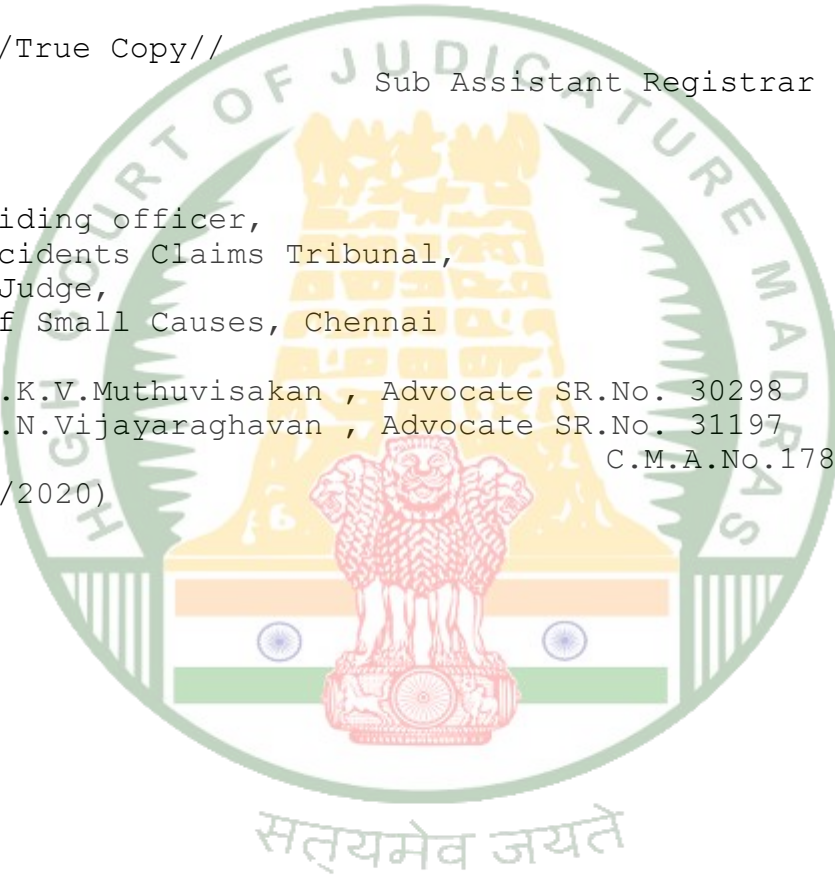
The Presiding officer,
Motor Accidents Claims Tribunal,
The V Judge,
Court of Small Causes, Chennai

+1cc to Mr.K.V.Muthuvisakan , Advocate SR.No. 30298

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 31197

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A.SK(18/02/2020)



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