

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.1861 of 2012

S.Vijayan

...Appellant/Petitioner

.Vs.

1.S.Marriyaselvam
2.National Insurance Co. Ltd.,
35, North Usman Road, II Floor,
T.Nagar, Chennai - 600 017.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 24.02.2012 passed in MCOP.No.3987 of 2009 on the file of the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan
for Mr.K.Ayyadurai
For Respondents : Mr.D.Bhaskaran for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.3987 of 2009 on the file of the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident on 07.09.2009. सत्यमेव जयते

2. The case of the claimant in nutshell is as follows:

On 07.09.2009, the claimant was riding his motorcycle bearing Registration No. TN 20 AH 8812 along Mambakkam - Irrunkattukottai Road and at about 15.00 hours, a speeding motorcycle bearing Registration No. TN 21 AC 6885, hit his motorcycle, as a result whereof, he sustained injuries all over his body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No.

TN 21 AC 6885 belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with the second respondent, National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

4. The second respondent, National Insurance Company Limited contested claim petition on all the grounds available to the insurer. The learned IV Judge / Motor Accidents Claims Tribunal, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,91,500/- together with interest at the rate of 7.5% per annum to the claimant. Not being 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.

5. Heard Mr.N.M.Muthurajan, learned counsel appearing for the appellant and Mr.D.Bhaskaran, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. A perusal of the discharge summary (Ex.P5) issued by Girshwari Hospital Pvt Ltd., shows that the claimant was admitted as an in-patient on 07.09.2009 and discharged on 12.09.2009. As per discharge summary the claimant had sustained B1 malleolar fracture his right leg and cancellous internal screw fixation was done. Dr.Mathiazhagan (PW2) after examining the claimant, had assessed the partial permanent disability as 30%. As rightly contended by the learned counsel appearing for the claimants, the Tribunal reduced the same to 25% without assigning any valid reason. It is contended that the claimant was working for M/s.Inter Arch Building Products Pvt Ltd., as store keeper earning a sum of Rs.24,000/- per month. The Tribunal fixed the monthly income of the claimant as Rs.20,000/- after analysing his pay slip (Ex.P9). Since there is no functional disability, multiplier method is not warranted in the instant case. Therefore, awarding a sum of Rs.2,000/- per percentage of disability, in the opinion of this Court would meet the ends of justice. On account of the accident, the claimant would not have been in a position to attend to his regular work for atleast two months and therefore, a sum of Rs.40,000/- (Rs.20,000/- X 2 months) is awarded towards loss of income.

7. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Partial Permanent disability	Rs.50,000/-
2.	Loss of income	Rs.40,000/-
3.	Pain and sufferings	Rs.30,000/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.10,000/-
6.	Medical expenses	Rs.45,500/-
7.	Future medical expenses	Rs.25,000/-
8.	Attendant charges	Rs.10,000/-
9.	Loss of amenities	Rs.15,000/-
10.	Damage to clothes	Rs.1,000/-
Total		Rs.2,31,500/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,91,500/- to Rs.2,31,500/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,91,500/- to Rs.2,31,500/-.

(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, National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.2,31,500/- (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 MCOP.No.3987 of 2009 on the file of the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

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

+1 cc to M/s.D.bhaskaran Advocate sr89087
+1 cc to M/s.N.M.Muthurajan Advocate sr88880
+1 cc to M/s.S.Ravi Advocate sr88837

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