



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.1983 Of 2012

J. Honest Daniel @ Anand Daniel (Minor)
rep by his father and next friend T.Joseph ... Appellant

Versus

1. S. Praveen Sai Chander
2.Royal Sundaram Alliance Insurance Co. Ltd.,
No.45 and 46, Whites Road,
Chennai- 600 014 ... Respondents

[R1 was set ex-parte in the Trial Court
Hence, notice may be dispense with]

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Decree and Judgment dated 12.01.2012 made in M.A.C.T.O.P.No. 3241 of 2009 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant	: Mr.Arundathan for M/s C and K. Law Firm
For Respondent-1	: Ex-Parte
For Respondent-2	: M. Krishnamoorthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the against the Decree and Judgment dated 12.01.2012 made in M.A.C.T.O.P.No. 3241 of 2009 on the file of the II Judge, Motor Accidents Claims Tribunal(Small Causes Court), Chennai.

2.The brief facts, which are necessary to decide the appeal and the relevant particulars, are as follows:-



The appellant is the Claimant, first respondent is the owner of the vehicle involved in the accident and second respondent is the Insurer of the vehicle. On 01.09.2009 at 8:30 hours when the claimant was proceeding in his bicycle in Jawaharlal Nehru near Ashok Nagar Post Office, a van bearing Registration No.TN-20-AF-9968 came very behind to the bicycle of the claimant and dashed

against him. The accident occurred only due to the rash and negligent driving of the driver of the van. Therefore, the claimant filed a claim petition in M.C.O.P.No.3241 of 2009 before the Tribunal claiming a sum of Rs.6,00,000/- as compensation.

3. Before the Tribunal on the side of the appellant 2 witnesses was examined and 8 exhibits were marked. On the side of the respondents, neither oral nor documentary evidence was adduced. Father of the victim examined himself as PW.1 and Dr.J.R.R.Thiyagarajan was examined as PW.2 and Ex.P.7 Disability certificate and Ex.P8. X-ray have been marked.

(i) Ex.P.1 in the Discharge summary of Pallava Hospital Chennai, which reveals that the claimant sustained injuries to his lower limb, pain and swelling in the right thigh, lacerated wound over the right thigh and abrasion in the right knee. Perusal of the same reveals that the claimant was diagnosed for fracture shaft of femur in the right side.

(ii) Ex.P.2 is the discharge summary of Pallava Hospital, Chennai, which reveals that the claimant was again admitted on 18.05.2011 and discharged on 19.05.2011 for the removal of implant from the right femur. Perusal of the same reveals that the claimant was diagnosed for healed fracture shaft of femur in the right side with implant in situ. The operation procedure adopted was that implant exit from right femur was done on 18.05.2011.

4. PW.2 Dr. J.R.R. Thiyagarajan in his evidence has stated that he had examined the claimant and deposed that the claimant has sustained fracture of right femur in the centre portion and the same is malunited with a bend. The muscles are stiffened and the right leg power is only 3/5. The claimant is having difficulty in walking fastly and squatting and assessed the disability as 35%.

5. The Tribunal after analyzing the above witnesses and exhibits adduced before it, computed the compensation payable to the claimant under various heads and awarded a sum of



Rs.1,67,000/- as compensation. Not being satisfied with the quantum of compensation, the claimant/appellant herein has preferred this present appeal.

6.The learned counsel appearing for the appellant/claimant would contend that the Tribunal has awarded a meager amount of compensation. He further contend that the Tribunal has awarded Rs.25,000/- under the head Pain and suffering, for the amenities and mental agony and for the injuries sustained which is not fair and it should be awarded individually under different heads.

7.The learned counsel for the second respondent/ Insurance Company would justify the award passed by the Tribunal as the one which is proportionate to the nature of injuries sustained by the claimant and prayed for dismissal of this appeal.

8. Thus, after analyzing the relevant materials this Court is inclined to enhance the compensation from Rs.1,67,000/- to Rs.1,84,000/- under the following heads.

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.70,000/-	Rs.70,000/-
Transportation	Rs.5,000/-	Rs.10,000/-
Extra nourishment	Rs.5,000/-	Rs.9,000/-
Damage to clothes and articles	Rs.1,000/-	Rs.1,000/-
Medical Expenses	Rs.61,000/-	Rs.61,000/-
Pain and suffering	Rs.25,000/-	Rs.25,000/-
Loss of amenities	-	Rs.8,000/-
Total	Rs.1,67,000 /-	Rs.1,84,000/-

9.In the result,

(i) This Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.1,67,000/- awarded by the Tribunal is hereby enhanced to Rs.1,84,000/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) The Insurance Company is directed to deposit the award amount, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of the copy of this Judgment.



WEB COPY

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the same, after adjusting the amount if any, already withdrawn.

(iv) The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

smn

To

1. The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M. Krishnamoorthy, Advocate SR.No.30583

+1cc to Mr.C.Munusamy, Advocate SR.No.30620

CMA No.1983 of 2012

SPD (CO)
GMY (30/08/2019)