

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2583 of 2011

M.Rajkumar

... Appellant/Petitioner

Versus

1.S.Govindaraj
(R1 was set exparte in the trial Court)

2.Bajaj Allianz General Insurance Co., Ltd.,
No.24 & 25, College Road,
Prince Towers, 4th floor,
Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 27.10.2010 made in MACT.O.P.No.3651 of 2007 on the file of the Motor Accident Claims Tribunal cum Additional District Judge (Fast Track Court No.1), Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents: Mr.S.Manohar (for R2)

JUDGMENT

The appellant/claimant has preferred this Civil Miscellaneous Appeal against the award and decree dated 27.10.2010 made in MACT.O.P.No.3651 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge - Fast Track Court No.1), Chennai, for enhancement of compensation, for the injuries sustained by him in a road accident.

2.The brief facts of the case of the appellant/claimant, in a nutshell, are as follows:-

On 14.06.2007 at about 00.15 hours, when the petitioner was riding his motorcycle bearing Regn.No.TN-59-U-8700 at 100

feet Road, Opposite to Iswarya Kalyana Mandapam, Chennai, proceeding from south to north, a Car bearing Regn.No.TN-09-S-1400 proceeding in the same direction was driven in a rash and negligent manner at hectic speed, dashed against the motorcycle, due to which the appellant/claimant sustained grievous injuries. Immediately, he was taken to the Government Kilpauk Medical College Hospital, Chennai for first aid and thereafter, for further treatment he was admitted in Sri Ramachandra Medical College Hospital, Porur, Chennai as inpatient from 14.06.2007 to 26.07.2007. Again in the same hospital, he was admitted from 28.02.2008 to 12.03.2008 as inpatient. He was aged 40 years at the time of accident. A police case was registered in Crime No.215/AS3/07 before the K4, Anna Nagar Police Station. The first respondent is the owner of the vehicle and the second respondent is the insurer. Hence, the appellant/ claimant filed a claim petition in MACT.O.P.No.3651 of 2007 before the Motor Accident Claims Tribunal cum Additional District Judge (Fast Track Court No.1), Chennai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident, which was restricted to Rs.10,00,000/-.

3.Before the Tribunal, on the side of the claimant, he himself examined as P.W.1 besides examining the doctor as P.W.2 and marked ten documents as Ex.P.1 to Ex.P.10. On the side of the respondents, neither oral nor documentary evidence was adduced. The Tribunal, after considering the entire evidence, has come to the conclusion that the accident was the result of the rash and negligent driving of the driver of the car owned by the 1st respondent and insured with the 2nd respondent and held that the respondents are jointly and severally liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal has passed an award for a total sum of Rs.3,34,012/- as compensation.

4.Having not been satisfied with the compensation amount awarded by the Tribunal, the claimant has come forward with the present appeal seeking enhancement of the compensation amount.

5. I have carefully heard the submissions made on either sides and perused the materials available on record.

6.On the point of quantum of compensation, the learned counsel appearing for the appellant/claimant has drawn my attention that for the injuries sustained by the claimant in the said accident, he took two spells of treatment, during the period from 14.06.2007 to 26.07.2007 and 28.02.2008 to 12.03.2008 and that in order to prove the disability suffered by the claimant, one Dr.Saravana Bavanatham, who treated the claimant, was examined as P.W.2, who assessed the disability of the claimant at 75%. But, the Tribunal has fixed the

disability of the claimant at 50%, holding that since P.W.2 has assessed 25% of the disability suffered by the claimant on the basis of the report issued by Physicist, only 50% disability alone would be taken for calculating the compensation. At the same time, none of the physicist was examined before the Tribunal. Therefore, according to the learned counsel for the appellant/claimant, the disability fixed by the Tribunal at 50% is on the lower side. In order to substantiate his case, the learned counsel for the appellant/claimant has clearly pointed out that in the accident, the claimant had suffered fracture in his head and he underwent a surgery in his head, besides loss of memory and diminishing of eye vision.

7. Considering the nature of the injuries sustained by the claimant, this Court is of the opinion that the fixation of disability at 50% by the Tribunal is on the lower side. Hence, the disability suffered by the claimant is hereby enhanced to 60%. Apart from that, by applying maximum rate of Rs.2000/- per 1% disability, a sum of Rs.1,20,000/- is hereby awarded under the head of disability.

8. Considering the long period of treatment undergone by the claimant, the sum of Rs.15,000/- awarded by the Tribunal for pain and sufferings is hereby enhanced to Rs.50,000/- and the sum of Rs.5,000/- awarded by the Tribunal for extra-nourishment is hereby enhanced to Rs.15,000/-.

9. It is submitted by the learned counsel appearing for the second respondent/Insurance company that income of the claimant has not been proved in the manner known to law. Further, he submitted that the claimant salary certificate was marked as Ex.P7 stating that he was working in a Hotel and earning a sum of Rs.8,500/- per month. But, now he is continuing his job, therefore, the Tribunal has rightly come to the conclusion that the nature of avocation has not been affected and fixed his monthly salary of Rs.4,500 per month and awarded a sum of Rs.25,000/- for loss of income during the period of treatment, which is reasonable.

10. But, taking into consideration of the medical evidence - disability certificate, this Court is of the opinion that due to the injuries suffered by him in the accident, the claimant could not do his work as he was doing before the accident. The claimant took two spells of treatment, for the period of 10 months. Hence, a sum of Rs.6,000/- is hereby fixed as monthly income of the claimant and for the 10 months of treatment period, a sum of Rs.60,000/- is hereby awarded for loss of income during the period of treatment. It is further seen that though the claimant had claimed a sum of Rs.3,00,000/-, based on the medical bills-Ex.P4, the Tribunal has awarded a reasonable

compensation of Rs.1,84,512/-. Hence, this Court feels that it need not to be interfered with the compensation amount awarded towards medical expenses.

11.Further, the learned counsel for the appellant/claimant submitted that the Tribunal has not provided any compensation for attendant charges and loss of amenities. Therefore, a sum of Rs.15,000/- under the head of loss of amenities and a sum of Rs.20,000/- under the head of attendant charges are hereby awarded.

12.Consequently, the total compensation amount of Rs.3,34,012/- awarded by the Tribunal is hereby modified and enhanced to Rs.4,69,012/-. The break up details of the modified/enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.1,00,000/-	Rs.1,20,000/-
Loss of income	Rs.25,000/-	Rs.60,000/-
Pain and Sufferings	Rs.15,000/-	Rs.50,000/-
Extra nourishment	Rs.5,000/-	Rs.15,000/-
Damages	Rs.500/-	Rs.500/-
Medical expenses	Rs.1,84,512/-	Rs.1,84,512/-
Transportation	Rs.4,000/-	Rs.4,000/-
Attendant Charges	-	Rs.20,000/-
Loss of Amenities	-	Rs.15,000/-
Total	Rs.3,34,512/-	Rs.4,69,012/-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.3,34,512/- awarded by the Tribunal is hereby enhanced to Rs.4,69,012/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The second respondent/Insurance company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit

being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Motor Accident Claims Tribunal
cum Additional District Judge
(Fast Track Court No.1), Chennai.

Copy to

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.S.Manohar, Advocate Sr.12284
+1cc to Mr.K.V.Muthuvisakan, Advocate Sr.12176

CMA No.2583 of 2011

rsi[co]
srg 10/5/2019

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