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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.20 of 2012

K.Murugan

...Appellant/Claimant

Vs.

1.G.Venkateshaalu

2.The New India Assurance Co. Ltd.,
East Coast Chambers, 1st floor,
No.92, G.N. Chetty road,
T.Nagar, Chennai - 600 017.

...Respondents/Respondent

(1st Respondent remained exparte)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.04.2011, in M.C.O.P.No. 1322 of 2007, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.N.Muthurajan
for Mr.R.Kalaiarasan

For Respondents : Mr.J.Chandran for R2
R1 - Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 1322 of 2007, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T Rules claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 18.01.2007.

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



(i) The appellant/claimant was aged 32 years on the date of the accident. He was working as a driver, earning a sum of Rs.4,000/- per month plus Rs.35/- batta per day.

(ii) On 18.01.2007, at about 08.00 hours, while the appellant/claimant was riding motorcycle bearing Registration No. TN 09 AE 9379 from Choolaimedu to T.Nagar along Trustpuram second main road, from north to south, at the junction of third cross street, a car bearing Registration No. TN 09 AQ 9804 was driven by its driver in a rash and negligent manner from west to east and dashed against the motorcycle. As a result, the appellant/claimant sustained grievous injuries. The driver of the car was responsible for the accident. The first respondent as the owner and the second respondent as the Insurance Company are jointly and severally liable to pay compensation to the appellant/claimant.

3. The owner of the car bearing Registration No. TN 09 AQ 9804, was absent before the Tribunal, and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, FIR (Ex.P1) and rough sketch (Ex.P2) were marked and the appellant/claimant (PW1) has deposed regarding the manner of the accident and he attributed negligence solely on the driver of the said car and the Tribunal also fixed the negligence on the part of the driver of the car.

4. 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.1,44,000/- together with interest at the rate of 7.5% per annum and directed the New India Assurance Company 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.

5. 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 driver of the said car is not in dispute and the same is hereby confirmed.

6. As per the evidence of Dr. Saravana Bhavanantham (PW2), the appellant/claimant has sustained very serious head injuries. There was Haemorrhagic contusions left temporal, contusion over medial orbit left and lacerated injuries over left temporal 7 x 1 cm and over chin 6 x 1 cm. He also suffered fracture of left nasal bone. There was also postero central herniation at C7 - D1 disc compressing cord and other injuries.



It is also seen from the discharge summary (Ex.P3), that the appellant/claimant was treated as inpatient at Vijaya Health Centre, Vadapalani from 18.01.2007 to 29.01.2007. Then he continued to take treatment in the same Hospital as outpatient.

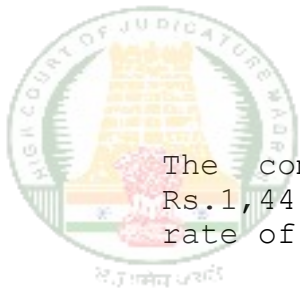
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7. Dr. Saravana Bhavanantham (PW2) who had issued the disability certificate (Ex.P6), has assessed the disability at 40%. However, taking note of all the evidences available on record, the Tribunal has rightly come to a conclusion and fixed the disability suffered by the appellant/claimant as 35% and awarded a sum of Rs.2,000/- per percentage of disability. Therefore, the sum of Rs.70,000/- awarded by the Tribunal towards 'permanent disability' is reasonable and the same is hereby confirmed.

8. The Tribunal has not granted any amount towards the 'loss of amenities' and therefore, a sum of Rs.6,000/- is awarded towards the same. Taking into consideration, the nature of the injuries sustained by the appellant/claimant and the deposition of PW2, the sum of Rs.30,000/- awarded towards the 'pain and sufferings' is enhanced to Rs.40,000/-. The Tribunal based on the salary slip (Ex.P4), fixed the salary of the appellant/claimant as Rs.4,500/- per month and calculated the loss of earning for a period of four months and awarded a sum of Rs.18,000/- towards the 'loss of earning' and the same is hereby confirmed. All the other heads awarded by the Tribunal are just and reasonable and therefore, the same is hereby confirmed.

9. Accordingly, the award of the Tribunal in M.C.O.P.No. 1322 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs.18,000/-	Rs.18,000/-
2.	Transport to Hospital	Rs.5,000/-	Rs. 5,000/-
3.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
4.	Damage to clothing	Rs.1,000/-	Rs.1,000/-
5.	Medical Expenses	Rs.10,000/-	Rs.10,000/-
6.	Attender's charges	Rs.5,000/-	Rs.5,000/-
7.	Pain and sufferings	Rs.30,000/-	Rs.40,000/-
8.	Permanent disability	Rs.70,000/-	Rs.70,000/-
9.	Loss of amenities	NIL	Rs.6,000/-
	Total	Rs.1,44,000/-	Rs.1,60,000/-



The compensation awarded by the Tribunal is enhanced from Rs.1,44,000/- to Rs.1,60,000/- which shall carry interest at the rate of 7.5% per annum.

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10. 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.1,44,000/- to Rs.1,60,000/-.

(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/the New India Assurance Company Limited is directed to deposited the enhanced compensation amount awarded by this court, i.e., Rs.1,60,000/- (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. 1322 of 2007, dated 28.04.2011, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, 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

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To

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

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.24789

C.M.A.No.20 of 2012

SSI(CO)
GMY(09/10/2019)