

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2818 of 2011

S.Devan

...Appellant

...Vs...

1. R.Rajendran

2. Iffco Tokio Gen. Ins. Co. Ltd.,
No.28, North Usman Road,
T.Nagar,
Chennai-17.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.06.2007, in M.C.O.P. No.551 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court IV, Poonamallee.

For Appellant : Ms.Y.Jayanthi Bhaskar

For Respondents : Mr.J.Michael Visuvasam for R2

R1 - Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P. No.551 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court IV, Poonamallee. He filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 19.05.2005, when he was standing along ECR road with his cycle.

2.According to the appellant/claimant, a speeding car bearing Registration No. TN 04 V 5550 belonging to the first respondent, hit him, as a result of which, he sustained grievous injuries. His further contention is that the rash and negligent driving of the driver of the car was the cause of the accident and that since the said car was insured with the second respondent, the Iffco Tokio

General Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

3.The first respondent remained absent before the tribunal and therefore, he was set ex-parte. The second respondent contested the claim petition by filing a counter. The learned Additional District and Sessions Judge, Fast Tract Court No.IV, Poonamallee after analysing the evidence on record, awarded compensation of Rs.82,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988.

4.Ms.Y.Jayanthi Bhaskar, learned counsel appearing for the appellant/claimant would contend that when Dr.Saichandran (PW3) had assessed the partial permanent disability as 40%, the tribunal has awarded a very meagre amount of Rs.35,000/- towards partial permanent disability. It is her specific contention that no amounts were awarded under the heads "loss of amenities" and "attender's charges."

5.A perusal of the Accident Register (Ex.P2) shows that the appellant/claimant had sustained a fracture of left leg and surgical operation was performed on him for implanting plates and distal screw locking was also done. Dr.Saichandran (PW3) had assessed the partial permanent disability as 40%. In disability certificate (Ex.P5) issued by Dr.Saichandran (PW3), it is clearly stated that the bones are malunited. However, the tribunal has taken the partial permanent disability as 35% and awarded only a sum of Rs.35,000/- towards partial permanent disability without assigning any reason.

6.It is contended by the learned counsel appearing for the appellant that the appellant/claimant was working as an accountant in a private firm and was earning a sum of Rs.5,000/- per month. Since there is no functional disability, multiplier method is not warranted in this case. The accident took place in the year 2005 and so, awarding a sum of Rs.1,000/- per percentage towards partial permanent disability would meet the ends of justice. Therefore, a sum of Rs.40,000/- (40% x Rs.1000/-) is awarded towards partial permanent disability. The Compensation awarded by the tribunal under various heads extracted is hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.35,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.1,000/-
4.	Extra nourishment	Rs.1,000/-
5.	Loss to cycle	Rs.2,000/-
6.	Loss of earning	Rs.18,000/-
7.	Medical expenses	Rs.5,000/-
Total		Rs.82,000/-

7. Since the appellant/claimant did not adduce any evidence to show that she was actually earning a sum of Rs.5,000/-, the tribunal was right in fixing her monthly income as Rs.3,000/-. However, a sum of Rs.1000/- was awarded under the heads transportation and extra nourishment by the tribunal which should be enhanced to Rs.5,000/-, under each head since the appellant was hospitalised for more than 20 days and an operation was also performed. Apart from that amount, the appellant/claimant is entitled to a sum of Rs.10,000/- and Rs.2,000/- towards loss of amenities and attender's charges respectively. The enhanced compensation under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Loss to cycle	Rs.2,000/-
7.	Loss of amenities	Rs.10,000/-
8.	Loss of income	Rs.18,000/-
9.	Medical expenses	Rs.5,000/-
Total		Rs.1,07,000/-

Thus, the appellant/claimant is entitled to a sum of Rs.1,07,000/-, which shall carry interest at the rate of

7.5% per annum from the date of claim petition till the date of deposit.

8. In the result,

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

(ii) The quantum awarded by the tribunal is enhanced from Rs.82,000/- to Rs.1,07,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) 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.551 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Poonamallee within a period of four 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 at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

mbi
To

The Motor Accidents Claims Tribunal,
Additional District & Sessions Judge
Fast Track Court IV,
Poonamallee.

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

+2ccs to Mr.J.Mahalingam , Advocate SR.No. 5987
+1cc to Mr.J.Michael Visuvasam , Advocate SR.No. 5401

C.M.A.No.2818 of 2011

A.SK(17/05/2019)