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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2019

Pronounced on : 26.03.2019

CORAM:

THE HONOURABLE Mr. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 3127 of 2011

P.K. Velmurugan .. Appellant/ Petitioner
Versus

1. M/s. Kanchi Karpooram Limited
Enathur Village
Paranthur Road
Kancheepuram - 631 552

2. M/s. National Insurance Co Ltd.,
Motor Third Party Claims Office
No.751, Anna Salai
Chennai - 600 002 .. Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.10.2009 made in M.C.O.P.No. 2778 of 2005 on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.III), Chennai

For Appellant : Mr. T.G. Balachandran

For Respondents : Mrs. K. Saraswathi (for R2)
: Exparte (for R1)

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Small Causes Court No.III) in MCOP No. 2778 of 2005 dated 06.10.2009, the claimant has filed the present appeal seeking enhancement of the compensation.

2. According to the claimant, on 15.06.2005 at about 9.15 hours, when he was waiting at Santhome High Road near Santhome Church Signal in his Motor Cycle bearing Registration No. TN 20 AZ 1842, the FIAT Palio Car bearing Registration No. TN 21 E 4664 was driven by its driver in a rash and negligent manner and hit the motor cycle of the claimant. In the impact, the claimant sustained fracture of spinal cord and multiple injuries all over his body. For the injuries sustained by him, the claimant has filed the claim petition claiming Rs.3,50,000/- as compensation.



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3.The claim petition was resisted by the Insurance Company by contending that it was the claimant who drove the two wheeler in a rash and negligent manner and hit the car and therefore, the insurance company cannot be fastened with any liability to pay compensation. The Insurance company also denied the age, avocation and other particulars furnished by the claimant in the claim petition and prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant examined himself as PW1 and Dr. N. Saichandran as PW2 and Exs. P1 to P13 were marked. On behalf of the respondents in the claim petition, neither any oral evidence or documentary evidence was adduced.

5.The Tribunal awarded a total compensation of Rs.87,000/- under various heads and directed the amount to be paid by the respondents 1 and 2 in the claim petition together with interest at the rate of 9.5% per annum.

5(b).The finding of the Tribunal that the driver of the car was rash and negligent in causing the accident, is not disputed and the same is confirmed.

6.The learned counsel for the claimant would contend that in the accident that took place on 15.06.2005, the claimant suffered spinal cord fracture besides multiple fracture all over the body. The claimant was admitted in Malar Hospital, Chennai from 15.06.2005 till 17.06.2005 for three days and thereafter continued his treatment. Due to the injuries sustained, the claimant could not walk or stand for long hours. To prove the nature of injuries sustained, the claimant also examined Doctor as PW2 who deposed that the claimant sustained fracture of Spinal Cord in D11, D12 which could also be evident from Ex.P4, discharge summary. The Doctor has assessed the disability of the claimant at 25%. At the time of accident, the claimant was working as Site Engineer in M/s Cori Engineering Pvt Ltd., Thiruvananthapuram, Chennai and earning Rs.13,000/- which is evident from Ex.P9, salary certificate. The Tribunal, without considering the above evidence made available, has awarded a sum of Rs.26,000/- towards loss of earning at the rate of Rs.13,000/- per month for two months. The fact remains that the claimant could not attend to his work for nearly six months due to the injuries he suffered. The Tribunal also awarded Rs.5,000/- towards Transportation and another Rs.5,000/- towards Extra Nourishment, which are meager. Further, the Tribunal awarded Rs.35,000/- towards permanent disability at the rate of Rs.1,000/- per percentage of disability which is minimal and prayed for enhancement.

7.On the above contention, this Court heard the learned counsel appearing for the second respondent/Insurance company and perused the records.

8.It is seen that the claimant was employed as a Site Engineer in a private company and to prove his avocation, he has marked Ex.P9, salary certificate. The claimant was



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admitted in Malar Hospital for 2 days after the accident and thereafter, he had taken physiotherapy treatment which is evident from Ex.P7 at Sundaram Medical Foundation Hospital, Chennai. According to the claimant, after the accident, he could not attend to his employment atleast for a period of six months, however, the Tribunal awarded loss of income during the period of treatment only for a period of two months and awarded Rs.26,000/- at the rate of Rs.13,000/- per month. It is evident that the claimant suffered fracture in D11 and D12 of Spinal Cord which is spoken to by the Doctor PW2. Having regard the nature of injury, this Court is of the view that the Tribunal ought to have considered that the claimant could not have attended to his employment atleast for three months and awarded atleast a sum of Rs.39,000/- at the rate of Rs.13,000/- per month for three months. Accordingly, this court awards a sum of Rs.39,000/- towards loss of income during the period of treatment.

9.To substantiate the nature of injuries suffered by the claimant, he had examined PW2/Doctor, who has assessed the disability of the claimant at 35%. The Tribunal ought to have allowed atleast Rs.2,000/- per percentage of disability instead of Rs.1,000/- per percentage of disability taking note of the injuries sustained by the claimant in his spinal cord. Therefore, this Court is inclined to award Rs.70,000/- towards permanent disability as against the sum of Rs.35,000/- awarded by the Tribunal. Thus, the break up details of compensation award amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of earnings	Rs.26,000/-	Rs.39,000/-
Transport Expenses	Rs.5,000/-	Rs.5,000/-
Extra Nourishment expenses	Rs.5,000/-	Rs.5,000/-
Damage to clothing and articles	Rs.500/-	Rs.500/-
Medical expenses	Rs.10,500/-	Rs.10,500/-
Compensation for pain and suffering	Rs.5,000/-	Rs.5,000/-
Permanent disability	Rs.35,000/-	Rs.70,000/-
Total	Rs.87,000/-	Rs.1,35,000/-

10.As regards the compensation awarded towards pain and suffering, medical expenses, extra nourishment and attendant charges, this Court feels that the compensation awarded under those heads are reasonable and justifiable.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,000/- is hereby enhanced to Rs.1,35,000/- 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 modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Motor Accidents Claims Tribunal
(Small Causes Court No.III), Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.C .R.KRISHNAMOORTHY, Advocate SR.No. 28262
+1cc to Mr.T.G. Balachandran , Advocate SR.No. 28432

CMA.No.3127 of 2011

A.SK(16/10/2019)