

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.2537 OF 2012

P.Ravi

... Appellant/Claimant

.Vs.

1. K.Dhamodaran

2. The New India Assurance Company Limited,
No.51, Radhakrishnan Salai,
No.1090, Poonamallee High Road,
4th Floor, Raja Rajeswari Towers,
Chennai - 600 004.
(Now operating from
Motor Third Party Claims Office,
No.45, Moore Street,
Chennai - 600 001.)

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 23.12.2011 passed in M.C.O.P.No.1962 of 2009 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.V, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For R1 : Ex-parte

For R2 : Mr.J.Chandran

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.1962 of 2009 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.V, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 04.05.2009.

2. The case of the claimant is that on 04.05.2009, when he was standing beside his bicycle on G.N.T.Road-bye pass, Devanari Village, Sholavaram, Thiruvallur District at about 10.00 hours, a speeding car bearing Registration No. TN 20 Q 5999 belonging to the first respondent and insured with the second respondent / New India Assurance Company Limited, hit him, as result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the car belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent / New India Assurance Company Limited, the owner of the car and the insurer are jointly and severally liable to pay compensation.

3. The first respondent / owner of the vehicle remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / New India Assurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Additional District Judge, Fast Track Court No.V, Chennai, after analysing the evidence on record, awarded a compensation of Rs.45,000/- together with interest at the rate of 9% per annum to the claimant. Not being 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, seeking enhancement of compensation.

4. Mr.S.Gangaram Prasad, learned counsel appearing for the appellant / claimant contended that the claimant was a mason by profession and he suffered a fracture on his left shoulder and though Dr.N.Saichandran (P.W.2) assessed the partial permanent disability sustained by the claimant as 35% the Tribunal awarded very meagre compensation of Rs.45,000/- to the claimant. He further contended that no amounts were awarded under the head of extra nourishment, damage to clothes, loss of earning power and therefore he prayed for enhancement of compensation.

5. Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent / New India Assurance Company Limited contended that the Tribunal after considering all the aspects of the case, has awarded a just compensation of Rs.45,000/- and the same need not be disturbed at this stage.

6. In the instant case, the claimant is a mason by profession and was aged 36 years on the date of accident. Dr.N.Saichandran (P.W.2) assessed partial permanent disability as 35%. A perusal of the discharge summary (Ex.P2) shows that the claimant has sustained a fracture on his left clavicle bone and he took conservative treatment. Since it is a simple fracture on the clavicle bone, there is no functional disability

for adopting multiplier method in the instant case. However, Dr.N.Saichandran (P.W.2) have contended that the claimant could not move his shoulder. In the circumstances, awarding a sum of Rs.70,000/- towards partial permanent disability would meet the ends of justice. Though it is contended that the claimant was earning a sum of Rs.10,000/- per month, no income proof was filed and therefore considering the year of accident, the notional income of the claimant is fixed as Rs.5,000/- per month. He would not have been in a position to attend to his routine work atleast for three months and the loss of income is calculated as Rs.15,000/- (Rs.5,000/- X 3 months).

The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs. 70,000/-
2.	Pain and sufferings	Rs. 15,000/-
3.	Extra nourishment	Rs. 5,000/-
4.	Damage to clothes	Rs. 500/-
5.	Loss of income	Rs. 15,000/-
6.	Transportation	Rs. 5,000/-
7.	Medical expenses	Rs. 5,000/-
8.	Attender's charges	Rs. 2,000/-
Total		Rs.1,17,500/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.45,000/- to Rs.1,17,500/- which would carry interest at the rate of 7.5% per annum.

8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.45,000/- to Rs.1,17,500/-.

(iii) The appellant / claimant is directed to pay the additional court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of receipt of a copy of this order.

(iv) The Registry is directed to draft the decree only after

the receipt of necessary Court fee.

(v) The second respondent/New India Assurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.1,17,500/- (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.1962 of 2009 on the file of the Motor Accidents Claims Tribunal/Additional District Court, Fast Track Court No.V, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Additional District Court,
The Fast Track Court No.V, Chennai.

+lcc to Mr.G.Balaji Prasad, Advocate, S.R.No.89394
+lcc to Mr.J.Chandran, Advocate, S.R.No.89030

C.M.A.No.2537 of 2012

RSV(CO)
CS/29/01/2020

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