

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3844 of 2011

P.Ganesan ... Appellant/Petitioner

Vs

1.K.Vigneswaran

2.K.Ajithkumar

3.I.C.I.C.I. Lombard General Insurance Co. Ltd.,
United Arcad, 3rd Floor,
Annamalai Nagar,
Bye pass Road, Thillai Nagar,
Tiruchy. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 25.04.2011 in MCOP No.249 of 2007 passed by the Motor Accidents Claims Tribunal, III Additional Subordinate Judge of Coimbatore.

For Appellant : Mr.V.Nicholas

For 3rd respondent : Mrs.R.Sree Vidhya

For 2nd respondent : Not ready notice

For 1st respondent : Notice served- No appearance

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J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, III Additional Subordinate Judge of Coimbatore in M.C.O.P.No.249 of 2007, dated 25.04.2011.

2. It is the case of the appellant that on 26.11.2006 at about 9.15 p.m., the appellant was riding his motorcycle, bearing registration No.TN 38 B 7142, together with his wife, G.Kavitha, who was sitting thereon as a pillion rider, starting the journey from Ganapathy so as to reach Ramanathapuram, Coimbatore, and on reaching the North-South Nethaji Road, the appellant was keeping his vehicle onto the extreme left side of the road and reduced the vehicle speed to the lowest possible extent, observing all other traffic norms and when he reached

near the gate of Kuppuswamy Naidu Memorial Hospital (GKNMH), an "ACCENT" CAR, bearing registration No.TN.39-AF 9829, which was proceeding from opposite direction on the same road in a rash and negligent manner, dashed against the appellant. As a result, the appellant and his wife sustained grievous injuries and he was admitted in the private Hospital as in-patient. Subsequently, he had admitted in Ganga Hospital, Coimbatore for further treatment. Hence, the appellant had filed a claim petition before the Tribunal against the owner of the car and its insurer, claiming a sum of Rs.10,00,000/- as compensation.

3. In order to prove his claim, the appellant has examined himself as P.W.1 and three other witnesses and marked as many as ten documents viz., Exs.P1 to P10. On the side of the respondents, four witness was examined and no evidence was adduced.

4. After analyzing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the car. Therefore, the Tribunal has awarded a sum of Rs.2,02,500/- as compensation to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal.

6. The learned counsel for the appellant even though raised various grounds in the appeal for enhancement of compensation, at the time of arguments, he contended that the accident was occurred due to rash and negligent driving of the driver of the car. The learned counsel for the appellant contended that the accident took place on 26.11.2006. Subsequently, the appellant was admitted in the private Hospital, as in patient. Thereafter, he was admitted in Ganga Hospital, Coimbatore from 27.11.2006 to 11.12.2006 and underwent three major operations. The Doctor, who treated the injured, assessed the disability at 56%. But the tribunal has considered only 40% disability and awarded a sum of Rs.60,000/- for disability (Disability at 40%, at the rate of Rs.15,000/- per percentage). The learned counsel further submitted that the tribunal has not awarded any compensation for damages of articles, extra nourishment and attender's charges.

7. The learned counsel would further submit that the appellant is running an Electrical Shop and earning more than a sum of Rs.20,000/-. Further, the learned counsel would submit that the Tribunal failed to award the compensation under the heads of loss of amenities and attendant charges during the period of treatment. The Tribunal, without considering all these facts, awarded a sum of Rs.2,02,500/- as compensation to the claimant, is very meager and the learned counsel prayed for enhancement of the compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Per contra, the learned counsel appearing for the third respondent contended that the award amount of Rs.2,02,500/-

passed by the Tribunal, is excessive. The nature of injuries and treatment taken by the appellant was considered in detail and the compensation awarded by the Tribunal is not meager and there is no necessity to enhance the amounts and prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellant as well as the third respondent and also perused the available materials on record before this Court.

10. From the materials on record, it is seen that P.W.4 Doctor has certified that the appellant suffered 56% of permanent disability. The Tribunal, after analyzing the oral and documentary evidence, the tribunal has considered only 40% disability and awarded a sum of Rs.60,000/-, which is reasonable. Considering the nature of injuries sustained by the appellant, this Court is inclined to enhance the amount of Rs.10,000/- instead of Rs.5,000/- for Pain and suffering. The learned counsel for the appellant submitted that the appellant spent a sum of Rs.1,00,000/- for medical expenses, for which, he has produced the medical bills. There is no error for awarding a sum of Rs.1,00,000/- towards medical expenses passed by the Tribunal. A sum of Rs.5,000/- granted by the Tribunal for extra nourishment and transportation, respectively, are meager. Considering the nature of treatment taken by the appellant, he is entitled for a sum of Rs.15,000/- and the same is awarded towards extra nourishment and transportation. The appellant was admitted in various hospital at Dharmapuri and Bangalore. Considering the same, this Court is inclined to grant a sum of Rs.5,000/- towards attender charges. The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	permanent disability	60,000/-	60,000/-
2.	Loss of Income	32,500/-	32,500/-
3.	Medical Expenses	1,00,000/-	1,00,000/-
4.	Pain and sufferings	5,000/-	10,000/-
5.	Extra Nourishment and transportation	5,000/-	15,000/-
6.	Attender's Charges	--	5,000/-
	Total	Rs.2,02,500/-	Rs.2,22,500/-

9. With the above modification, this appeal is partly allowed. The third respondent-Insurance Company is directed to

deposit the enhanced award amount of Rs.2,22,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The III Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.104455

C.M.A.No.3844 of 2011

SSD (CO)
GMY (19/11/2020)

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