

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3154 of 2012

V.Murugan

... Appellant

Vs

1. H.Basappa

2. Oriental Insurance Company Ltd.,
Lakshmi Shopping Complex
Subash Road, Keppa
Karnataka State
Pin: 577 126.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the Judgment and award dated 12.01.2012 passed in M.C.O.P.No. 439 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Krishnagiri, in so far as the same are against the appellant for enhancement of compensation.

For Appellant : Mr.P.Mani

For Respondents : Mr.D.Baskaran

J U D G M E N T

This appeal has been filed by the appellant/claimant challenging the award of the Motor Accidents Claims Tribunal/Additional Sub Judge, Krishnagiri in MCOP.No.439 of 2008, dated 12.01.2012.

2. It is the case of the appellant/claimant that on 15.07.2007, at about 07.30 a.m., he was proceeding in his cycle near State Bank of Mysore, B.H. Road, Arsikere. At that time, the rider of TVS Victor motor cycle bearing Regn.No.KA-14-R-7797 drove the vehicle in a rash and negligent manner and hit the cycle, which the appellant was riding. Hence, he filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant, PW1 & PW2 were examined and Exs.P1 to P5 were marked. On the side of the respondents, no oral or documentary evidences were marked.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent riding of the rider of the TVS Victor motor cycle bearing Regn.No.KA-14-R-7797 and awarded a sum of Rs.78,500/- to the appellant/ claimant jointly and severally with interest at the rate of 9% per annum.

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 prayed for awarding compensation under the heads viz., medical expenses and transport to hospital. He also prayed for enhancing the compensation awarded under other heads.

7. Per contra, the learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation which is not meagre. Further, the appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant / claimant as well as the second respondent and also perused the materials available on record before this Court.

9. From the claim petition, it is seen that the appellant / claimant was doing Business in selling flowers and plants, earning a sum of Rs.5,000/- per month. PW2 Doctor had examined him and assessed the disability at 40%. However the Tribunal reduced the same to 20% and awarded a sum of Rs.2,000/- per percentage of disability. The Wound Certificate issued by the Senior Orthopedic Surgeon at Sri Jayachama Rajendra General Hospital, Arsikere shows that the appellant sustained a fracture in his right Tibia, which is grievous in nature. In view of the same, this Court is inclined to fix the disability at 30% and therefore, Rs.60,000/- is awarded towards temporary disability. The accident is of the year 2007 and hence the monthly income fixed by the Tribunal at Rs.4,500/- is enhanced to Rs.5,000/- and hence a sum of Rs.15,000/- is awarded towards partial loss of income. Considering the year of the accident, the amounts awarded under the heads nutritious food, attender's expenses and pain and sufferings at Rs.3,000/-, Rs.2,000/- and Rs.10,000/- are meagre and they are hereby enhanced to Rs.5,000/-,

Rs.5,000/- and 15,000/- respectively. The amount granted under the head loss of amenities is sufficient and therefore no interference is needed. The rate of interest awarded at 9% is 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	Temporary disability	40,000	60,000
2	Partial Loss of income	13,500	15,000
3	Nutritious Food	3,000	5,000
4	Attenders Expenses	2,000	5,000
5	Pain and sufferings	10,000	15,000
6	Loss of Amenities	10,000	10,000
	Total	Rs.78,500/-	Rs.1,10,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.78,500/- is hereby enhanced to Rs.1,10,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.439 of 2008 on the file of the Motor Accidents Claims Tribunal/Additional Subordinate Judge, Krishnagiri within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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Sd/-

Assistant Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

kmm

To

1.The Motor Accidents Claims Tribunal,
Additional Subordinate Court,
Krishnagiri.

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

+1 cc to Mr.P.Mani Advocate sr100786

+1 cc to Mr.D.Baskaran advocate sr100891

C.M.A.No.3154 of 2012

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