

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.292 of 2015

D.Samraj

.. Appellant/Petitioner

Vs

M/s. Divisional Mechanical Engineer
(Diesel Loco Shed)
Southern Railway, Tondiarpet,
Chennai - 600 081.

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.1560 of 2008 dated 10.12.2014 on the file of the Motor Accident Claims Tribunal, Second Court of Small Causes, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondent : M/s.M.Vijayanand,
Additional Standing Counsel

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.1560 of 2008 dated 10.12.2014, on the file of the Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. The claimant is the appellant herein, who has preferred this appeal for enhancement of compensation awarded by the Tribunal.

2. The brief case leading to the claim petition is that on 25.03.2008, at about 04.10 p.m., when the appellant/claimant was riding the motor cycle bearing Registration No.TN 09 AQ 3121 along the E.H.Road, opposite to Indian Oil Petrol Bunk, Chennai, from South to North direction, the lorry bearing Registration No. TN 04 3191, which came in the same direction in a rash and negligent manner, hit against the appellant/claimant vehicle by its left side bumper. As a result of which, he fell down and sustained grievous injuries and also suffered huge medical expenses, pain and sufferings and loss of income. Hence, the appellant/claimant claimed a sum of Rs.1,25,000/- as compensation for the said loss.

3. The respondent in their counter statement denied the mode of accident stated in the claim application by stating that the accident occurred only due the petitioner's negligence and there is no negligence on the part of the driver of the lorry and the negligent aspect on the part of the lorry driver has to be proved by the petitioner. Further, the sum claimed by the claimant for medical expenses and other related heads are excessive and imaginary one.

4. The Tribunal, upon perusing the documents and based on the evidence placed before it, has given its finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the lorry and directed the respondent herein to pay the compensation to the claimants. Before the Tribunal, appellant herein himself was examined as PW1 and Dr.N.Saichandran was examined as PW2 and Exs.P1 to P10 were marked on the side of the appellant. On the side of the respondent, no oral or documentary evidence adduced.

5. The Tribunal, while determining the compensation, has taken into consideration the documentary evidence put forth on the side of the appellant/injured and the oral evidence given by Dr.N.Saichandan/PW2, who treated the injured, who assessed the disability and has awarded a sum Rs.10,000/- as total compensation. Aggrieved against the same, the present Civil Miscellaneous Appeal is filed.

6. The appellant is aggrieved against the quantum of award. It is averred by the appellant that he sustained fracture in right big toe, laceration in right foot and multiple injuries over the body. The grievance of the appellant is that, the Tribunal after considering the nature of injury sustained by him and treatment taken as an inpatient, has awarded only a sum of Rs.10,000/- under the heads transportation, extra nourishment, medical expenses and pain and sufferings, which is not legally sustainable. It is further stated that the attendant circumstances were not properly considered by the Tribunal. Further, the Tribunal has not awarded any sum under the heads "attendant charges" and "loss of amenities".

7. Heard both sides and perused the documents.

8. On a perusal of the records and also the contention raised by both sides, it is observed that the appellant/claimant sustained injury due to said accident that occurred on 25.03.2009; Ex.P3/Discharge Summary reveals the fact that the appellant took inpatient treatment at Government Stanley Hospital, Chennai, from 25.03.2008 to 31.03.2008, for a period of six days, further 'K' wire fixation done on 25.03.2008 and as per Ex.P5/Discharge Summary, he took treatment as inpatient in the same hospital from 16.04.2008 to 19.04.2008 for a period of four days,

whereby, SSG done on 16.04.2008 and as per Ex.P6/Out patient chits, appellant took outpatient treatment till 10.06.2008.

9. It is the contention of the appellant/claimant that the claimant, being a cooly, definitely would have sustained loss of income and further for the injuries sustained by him, he would have definitely dependent upon somebody for some time, to do his day to day work and these aspects were not at all considered by the Tribunal.

10. On the other hand, Mr.M.Vijayanand, learned Additional Standing Counsel for the respondent would vehemently argued that the compensation awarded by the Tribunal is reasonable and the award requires no interference.

11. Taking into consideration the nature of injuries sustained by the appellant/claimant, treatment taken and the amount incurred for medical expenses and further the pain and suffering undergone by him during the period of treatment and the loss of income incurred to by family, this court is of the considered view that it would be proper to grant a just and reasonable compensation granted to the injured claimant/appellant.

12. Accordingly, by considering the fact that the appellant being a cooly would have definitely earn a sum of Rs.3,000/- per month. Hence, for the treatment period of two months, the loss of earning is calculated at Rs.6,000/- (Rs.3,000 x 2). Similarly, this Court grants reasonable amount under various heads as follows:

Sl.No.	Heads	Amount Awarded by this court
1.	Loss of earning (3,000x2)	6,000.00
2.	Disability	40,000.00
3.	Attender Charges	2,500.00
4.	Loss of Amenities	2,500.00
5.	Pain and Sufferings	10,000.00
6.	Damages to clothes	500.0
	Total	61,500.00

13. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.10,000/- to Rs.61,500/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The 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 respondent is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any.

(V) On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dua

To

1. The Motor Accidents Claims Tribunal,
Second Court of Small Causes,
Chennai.

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

+1cc to Mr. A.A. Venkatesan, Advocate SR.No.58975

+1cc to Mr. M. Vijayanand, Advocate SR.No.59101

C.M.A.No.292 of 2015

NRL (CO)
GMY (03/12/2019)

WEB COPY