

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3223 of 2012

Sekar

... Appellant/Claimant

Vs.

1.V.Dinesh

2.The Branch Manager,
Reliance General Insurance Company Ltd.,
Branch Office,
Madurai. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, aggrieved by the Award and Decree dated 23.12.2011 made in M.C.O.P.No.224 of 2007 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Hosur.

For Appellant : Mr.M.Sriram
For R1 : Mr.B.Thirumalai
For R2 : Mr.S.Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant against the Award and Decree dated 23.12.2011 passed in M.C.O.P.No.224 of 2007 by the Motor Accident Claims Tribunal/Subordinate Court, Hosur, by raising various grounds.

2.The case of the appellant is that on 25.04.2007, the petitioner was proceeding in the TVS XL Super moped bearing Registration No.TN-24-X-2903 as a pillion rider and the said moped was driven by his father Maha Devaya proceeding from Denkanikottah to go to Osahalli Village at about 7.30 p.m. in between Peria Bodhu Kotta to Chinna Boodhu Kotta, near S.L.B. Brick Chamber, the Bajaj Minidor Auto bearing Registration No.TN-29-J-0326 belonging to the first respondent and insured

with the second respondent came and hit the said moped in a rash and negligent manner. Due to said the impact, the appellant and his father were thrown out and the appellant sustained grievous injuries, wherein his right knee joint laceration and fracture of the femur lower end, tenderness, abnormal mobility of right middle thigh, multiple injuries all over the body and Type II open supracondylar fracture right femur with intercondylar extension was found. He was admitted in Government Hospital, Hosur and shifted to St.John's Hospital, Bangalore and then taken treatment at private nursing home, Hosur and various surgeries have been done. The appellant submitted that he claimed Rs.11,30,000/- but he restricted his claim to Rs.5,00,000/- and prayed for awarding the same at the rate of 12% interest.

3.A counter affidavit has been filed by the second respondent denying the said averments and submitted that the same was not driven rashly and he prayed for dismissing the same as the claimant has to establish the act of negligence and cause of accident before the lower Court beyond doubt and also stated that the amount claimed is very high and excessive and the income of the said claimant was not proved.

4.The learned counsel for the Appellant submitted that the Appellant was doing vegetable business and seasonal business of coconut and tamarind. He further submitted that the Appellant claimed Rs.5,00,000/- for grievous injuries but the Court below has awarded a very meagre amount. The multiplier method was not adopted while calculating the future loss of income and also the medical expenses, the same has to be increased and the pain and suffering and other heads also to be increased and the interest rate also to be increased. The appellant has spent more money towards the treatment, and praying for interfering with the award passed by the Court below.

5.Heard the learned counsel for the appellant, the learned counsel for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

6.On perusal of the award passed by the Court below, it is observed that the claimant examined himself as PW1, his father examined as PW2 and one Mr.Ganthi examined as PW3. Further, the appellant had marked Exs.1 to 19. On the side of the respondent neither any witness nor any document was marked.

7. This Court after going through the evidence on record is of the view that on certain heads where no amount awarded has to be considered.

8.The doctor has assessed the permanent disability at 40% and an amount of Rs.80,000/- has been awarded for disability and the same is hereby confirmed. Rs.73,429/- and Rs.20,946/- has been awarded on the heads of medical expenses as per the bills provided and the same has been confirmed. Rs.40,000/- has been awarded for pain and suffering and the same is slightly excessive according to the second respondent, but this Court is of the view that the amount awarded is reasonable as the nature of injuries sustained is grievous fractures and the amount awarded is confirmed. Further, the Court below on the claim made for transport, attender charges, extra nourishment and damages to belongings, has not awarded any amount. Hence this Court is inclined to award the same. Accordingly, a reasonable sum of Rs.5,000/- towards transport expenses, a sum of Rs.5,000/- towards attender charges, a sum of Rs.5,000/- towards extra nourishment and a sum of Rs.2,000/- towards damages to belongings are awarded. Thus, the amount of compensation awarded by the Tribunal is enhanced to Rs.2,31,375/-.

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent insurance company is directed to deposit the said amount ie. Rs.2,31,375/- 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 four weeks from the date of receipt of a copy of this Judgment. After depositing the said amount, the appellant/claimant can withdraw the same by filing a formal petition before the concerned Court. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Motor Accident Claims Tribunal/
Subordinate Judge, Hosur.

+1 cc to Mr.Mukund R.Pandiyam Advocate sr103724

+1 cc to Mr.S.Arunkumar Advocate sr103703

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