

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.959 of 2011

Raja @ K.Sundararajan

... Appellant/Petitioner

Vs.

1.Dayalan

2.Balaji Alliance General Insurance
Company Limited,
5th Floor, Prince Towers,
No.25/26, College Road,
Nungambakkam, Chennai 6.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 03.11.2010 made in M.C.O.P.No.3027 of 2007 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : No appearance

For Respondents: Mr.Nageshwaran for R1
M/s.R.Rathna Thara for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment dated 03.11.2010 in MCOP. No.3027 of 2007, on the file of the Motor Accident Claims Tribunal/V Court of Small Causes, Chennai.

2. The case of the appellant is that on 10.06.2007, at about 9.00 A.M., when the appellant/claimant was walking at New Avadi Road, near the Madenna Mansque from South to North direction, a motorcycle bearing Registration No. TN 02 W 8501, hit the claimant and due to which he sustained injuries in the right leg and left shoulder. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The claimant has filed a claim petition before the Motor Accidents Claims Tribunal cum V Court of Small Causes, Chennai claiming a sum of Rs.6,00,000/- The learned Judge, V Court of Small Causes has taken the case on file in MCOP. No.3027 of 2007. During the trial, in order to prove the case of the appellant, he examined two witnesses viz., P.W.1 and P.W.2 and marked five documents viz., Ex.P1 to Ex.P5.

4. The Insurance Company opposed the claim petition and hence they sought for dismissal of the claim petition. On the side of the Insurance Company, examined two witnesses and marked 7 documents.

5. The Tribunal, after analysing the evidence adduced by both sides, has come to the conclusion that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 02 W 8501, insured with the second respondent Insurance Company and directed the Insurance Company to pay the compensation amount of Rs.1,30,500/- to the claimant in the first instance and then recover the same from the owner of the offending vehicle, since the rider of the offending Van was not in possession of a valid driving licence on the date of the accident.

6. There is no appearance on behalf of the petitioner.

7. Heard Mr.Nageshwaran, learned counsel appearing for the first respondent and M/s.R,Rathna Thara, learned counsel appearing for the second respondent and perused the materials available on record.

8. Per Contra, learned counsel appearing for the second respondent / Insurance Company contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.1,30,500/- and the same need not be disturbed at this stage.

9. A perusal of the records shows that the appellant/claimant sustained fracture of both bones in his right leg and implantation was done and fractured bones are malunited due to pain in the leg and could walk with limp and also restricted the movements of his right leg to an extent of 30 degrees. Dr.N.Saichandran (PW2) has assessed the permanent disability as 50%. The Tribunal considering the nature of injuries sustained by the claimant had awarded a sum of Rs.1,00,000/- i.e. Rs.2,000/- per percentage, towards permanent disability which in the opinion of this Court is just and reasonable. The Tribunal awarded only a sum of Rs.3,000/-

towards "loss of income". On account of the accident, the claimant has also got difficulty in walking fast and climbing steps which are affected his total earning power of his mason work and he would not have been in a position to attend to his regular work atleast for 12 months and therefore, a sum of Rs.36,000/- (Rs.3,000/- x 12 months) is awarded towards "loss of income".

10. Similarly, the Tribunal awarded a sum of Rs.3,000/- towards Extra Nourishment, a sum of Rs.1,000/- towards Transportation and a sum of Rs.500/- towards Damage to cloths and articles, are low and the same are hereby modified and enhanced to a sum of Rs.5,000/- towards Extra Nourishment, a sum of Rs.5,000/- towards Transportation and a sum of Rs.5000/- towards Damage to cloths and articles. As rightly pointed out by the learned counsel for the appellant/claimant, the Tribunal has failed to award any amount towards Attender's Charges and this Court is inclined to award a sum of Rs.3,000/- towards Attender's Charges. The compensation awarded by the Tribunal under other heads of Medical Expenses and Pain and sufferings are concerned, the same are found to be just and reasonable and requires, no reduction. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Transportation	1,000	5,000	Enhanced
2.	Loss of income	3,000	36,000	Enhanced
2.	Permanent disability	1,00,000	1,00,000	Confirmed
3.	Pain and sufferings	20,000	20,000	Confirmed
4.	Medical Expenses	3,000	3,000	Confirmed
5.	Extra nourishment	3,000	5,000	Confirmed
6.	Damage to clothes	500	5,000	Enhanced
7.	Attender's Charge	-	3,000	Granted
	Total	1,30,500	1,77,000	Enhanced by Rs.46,500/-

11. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,30,500/- to Rs.1,77,000/-, which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / Bajaj Alliance General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.1,77,000/- (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 MCOP.No.3027 of 2007 on the file of the Motor Accident Claims Tribunal / V Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 02 W 8501 on the same cause of action.

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

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vr
To

1.The V Judge,
Motor Accidents Claims Tribunal/
Court of Small Causes,
Chennai.

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

+1cc to Mr.Nageswaran, Advocate Sr.103589
+1cc to M/s.R.Rathnathara, Advocate Sr.103596

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kk[co]
srg 15/09/2020