

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.289 of 2013

J.Philips

...Appellant/Claimant

Vs.

1.P.Vijayakumar

2.The New India Assurance Company
Limited, No.46, Moore Street,
Chennai 1.

... Respondents 1 & 2/ Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.04.2007, in M.C.O.P.No. 3609 of 2001, on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1- Exparte before the
Claims Tribunal

R2- Mr.S.Manohar

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai, in and by its award dated 10.04.2007, in M.C.O.P.No. 3609 of 2001, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 30.04.2001, at about 00.45 hours, when the appellant/claimant was riding a bicycle on north Usman Road, the first respondent, who was riding a motor cycle, bearing Reg No.TN - 07- V 8449 came from south to north direction in a rash and negligent manner and hit against the appellant/claimant, as result of which, the claimant sustained grievous injuries all over the body. Hence, he made a claim petition in a sum of

Rs.4,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/New India Assurance Company Limited, Chennai contested the claim petition by filing a counter statement, inter alia contending that it was the claimant, who is responsible for the accident, as he rode the bicycle carelessly and got himself involved in the accident. Therefore, the second respondent/Assurance Company cannot be mulcted with any liability to pay compensation. That apart, the owner of the vehicle does not have a valid driving licence, Hence, the second respondent is not liable to pay compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.J.R.R. Thiagarajan as P.W.3 and Mr.V.P. Sivaraman (Head Constable) as P.W.3 and marked 6 documents as Exs.P.1 to P.6. On the side of the Assurance Company, neither any witness was examined nor any document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was a result of the rash and negligent driving of the motorcycle belonging to the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed and awarded for a total sum of Rs.64,209/- with interest at the rate of 7.5% per annum from the date of Petition till payment as the compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	Head	Amount granted
1.	Transportation	Rs.2,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Nutrition	Rs.2,000/-
4.	Medical expenses	Rs.1,209/-
5.	Loss of earnings	Rs.9,000/-
6.	Disability	Rs.40,000/-
Total		Rs.64,209/-

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already stated above.

8. Mr.K.Varadha Kamaraj, the learned counsel appearing for the appellant submitted that the appellant/claimant is an Air-Condition Mechanic and was earning a sum of Rs.5,000/- per month on the date of the accident. Due to the accident, he was admitted in the Government Royappettah Hospital and was treated as an inpatient for a period of one month, (i.e., from 30.04.2001 to 28.05.2001). The learned counsel further submitted that due to the accident, the appellant/claimant sustained multiple injuries, such as (i) Fracture of right femur; (ii) Amputation of right index finger; (iii) Fracture of Zygoma; (iv) Sutured wound on right eye brow; (v) Head injuries; and (vi) implant fixed on the right leg. P.W.2, Dr.J.R.R.Thiagarajan has assessed the permanent disability of the claimant as 55%. However, the Tribunal, despite taking note of all the above, ignored the same and observed that injuries sustained by the claimant in simple and took functional disability as 40% and it shall not cause any untold misery, pain or mental agony. Thus, by observing so, awarded only a sum of Rs.40,000/- as compensation towards permanent disability, which is low. The learned counsel further contended that the Tribunal failed to award any amount towards "Damage to clothes", and hence, seeks for enhancement of the compensation.

9. Mr.S.Manohar, the learned counsel appearing for the second respondent/Insurance Company strongly contended that, except the documents related to the injuries sustained, the appellant/claimant did not produce any documents with regard to the monthly income so as to arrive at a just compensation towards loss of income, and the Tribunal, taking into consideration various aspects, has awarded a just compensation of Rs.64,209/-, and the same need not be disturbed at this juncture.

10. This Court is not inclined to accept the contention of the learned counsel for the second respondent/Insurance Company and the same is rejected. On a perusal of Ex.P.3/Disability Certificate, it is seen that the appellant/claimant was under continuous treatment for a period of one month (i.e., from 30.04.2001 to 28.05.2001). That apart, he is an Air Condition Mechanic by avocation and was earning a sum of Rs.5,000/- per month on the date of the accident. The Tribunal ignoring all these aspects, has awarded a sum of Rs.40,000/- towards permanent disability, which is very low and failed to award compensation under other heads by assigning some other reasons, which appears to be ambiguous. This Court finding no reason to adopt multiplier method, considering the fact that the claimant was under treatment for nearly one month

and taking into consideration the pain and anguish underwent by him during such period, is inclined to fix a sum of Rs.2000/- per percentage, towards permanent disability. The doctor has assessed disability as 55%. Therefore, the compensation payable under the head "Permanent Partial Disability" works out to a sum of Rs.1,10,000/- (55% x Rs.2,000).

11. Similarly, the compensation awarded by the Tribunal under the heads "Transportation" and " Nutrition" at a sum of Rs.2000/- each are low and the same are hereby modified and enhanced to a sum of Rs.7,000/- each. Likewise, the compensation awarded by the Tribunal at a sum of Rs.10,000/- towards Pain and Sufferings is meager, and the same is modified and enhanced to from Rs.15,000/-. So far the compensation awarded by the Tribunal towards medical expenses at Rs.1,209/- and R.9000/- towards loss of earning are concerned, the same appears to be just and reasonable and hence, they stand confirmed. As rightly pointed out by the learned counsel for the claimant, the Tribunal has failed to award any amount towards damage to clothes, and this Court is inclined to award a sum of Rs.800/- under the said head. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Transportation	Rs.7,000/-
2.	Pain and sufferings	Rs.15,000/-
3.	Nutrition	Rs.7,000/-
4.	Medical expenses	Rs.1,209/-
5.	Loss of earnings	Rs.9,000/-
6.	Disability	Rs.1,10,000/-
7.	Damage to clothes	Rs.800/-
Total		Rs.1,50,009/-

Thus, the appellant/claimant is entitled to a sum of Rs.1,50,009/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

12. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.64,209/- to Rs.1,50,009/-, 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 appellant/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 second respondent/New India Assurance Company Limited is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. 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

//True copy//

Sub Assistant Registrar

vkrr

To
The Motor Accidents Claims Tribunal,
III Court of Small Causes,
Chennai.

+1cc to Mr.S.Manohar, Advocate SR.No.24317

+1cc to Mr.BS.Padmanaban, Advocate SR.No.23908

C.M.A.No.289 of 2013

VD(CO)
GMY(08/06/2019)

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