

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3475 of 2013

V.Jackuline

... Appellant /Claimant

Vs

1. Diwakar Deena Thayalan

2. ICICI Lombard General Insurance Co., Ltd.,
1st Floor, Arihant Plaza,
No.84/85, Waltax Road,
Parry's Corner,
Chennai - 600003.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the Judgement and decree dated 31.07.2012 made in M.A.C.T.O.P.No. 2583 of 2009 on the file of III Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : Mr.J.Michael Visuvasam
for R2
R1 - Exparte

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/III Judge, Court of Small Causes, Chennai in MCOP.No. 2583 of 2009, dated 31.07.2012.

2. It is the case of the appellant/claimant that on 01.05.2009, at about 6.00 P.M., he was riding a Hero Honda Passion bearing Reg.No.TN-02AC-9360 along Link Road, Chinthamani, near Petrol Bunk, Anna Nagar East, Chennai-102 and at that time, a car bearing Reg.No. TN-20-AV-9847 came in a rash and negligent manner and dashed against the said Hero Honda Motor Cycle. Due to the accident, the appellant / claimant sustained grievous injuries all over his body. According to the appellant / claimant, the rash and negligent driving of the

driver of the car was the cause of the accident. Hence, he filed a claim petition before the Tribunal, claiming a sum of Rs.6,00,000/- 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 P9 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 driving of the driver of the car and awarded a sum of Rs.2,24,500/- together with interest at the rate of 7.5% per annum as compensation to the appellant / claimant.

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 appearing for the appellant would submit that the Tribunal has erred in awarding only a sum of Rs.13,500/- as against the claim of Rs.60,000/- for loss of earning for the period of treatment. He further submitted that the appellant sustained severe injury in right hand segmental, fracture right humerus and orif with LCD CP and injury in chest and multiple injuries all over the body. The Doctor assessed the disability at 40 %. However, the Tribunal awarded only a meagre sum of Rs.70,000/- towards permanent disability. The learned counsel prayed for awarding compensation under the heads loss of earning power and attender's charges. 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. 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 Saree Business, aged 42 years on the date of the accident, earning a sum of Rs.10,000/- per month. In the absence of any evidence, the Tribunal fixed the notional income as Rs.4,500/- per month and awarded a sum of Rs.13,500/- towards loss of income for 3 months which is meagre. PW2 Doctor had

assessed the partial permanent disability at 40% for segmental fracture humerus right. PW2 Doctor also deposed that the fracture is malunited. The appellant / claimant had adduced discharge summary (Ex.P2), Outpatient Card (Ex.P3), X ray report (Ex.P8) and Disability Certificate (Ex.P9) to prove the injuries sustained by him and the treatment taken by him. In view of the fracture and multiple injuries, this Court is inclined to award loss of income for 6 months. Hence, a sum of Rs.27,000/- is awarded towards loss of income for 6 months. A sum of Rs.10,000/- awarded under the head pain and sufferings is also meager and hence, it is enhanced to Rs.15,000/-. The Tribunal did not award any amount towards attender's charges. It is evident from the Discharge Summary (Ex.P2) that the appellant / claimant was admitted at Soundarapandian Bone and Joint Hospital from 01.05.2009 to 06.05.2009. Hence, a sum of Rs.5,000/- is awarded towards attender's charges, considering the year of the accident. All the other heads awarded by the Tribunal are just and reasonable and therefore no interference is needed. 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	Loss of income	13,500	27,000
2	Transportation	5,000	5,000
3	Extra nourishment	5,000	5,000
4	Damage to clothes	1,000	1,000
5	Medical Expenses	1,10,000	1,10,000
6	Loss of amenities of life	10,000	10,000
7	Pain and sufferings	10,000	15,000
8	Disability of 35% at the rate of Rs.2000/- per disability	70,000	70,000
9	Attender's charges	Nil	5,000
	Total	Rs.2,24,500/-	Rs.2,48,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,24,500/- is hereby enhanced to Rs.2,48,000/- together with interest at the rate of 7.5% 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.2583 of 2009 on the file of the Motor Accidents Claims Tribunal/III Judge, Court of Small Causes, Chennai 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.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. ICICI Lombard General Insurance Co., Ltd.,
1st Floor, Arihant Plaza,
No.84/85, Waltax Road,
Parry's Corner,
Chennai - 600003.
2. The Motor Accidents Claims Tribunal/
III Court of Small Causes, Chennai.

+lcc to Mr.K.V.Muthuvisakan, Advocate Sr.103905

+lcc to Mr.J.Michael Visuvasam, Advocate Sr.103735

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srg 19/12/2020

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