

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE. V. BHAVANI SUBBAROYAN

CMA.No.3581 of 2013 and

A.Alibatcha

... Appellant/Claimant

Vs.

1. R.Janakiraman

2. The New India Assurance Company Limited,
Garden Apartments, I floor,
68, Purasawalkam High Road,
Chennai 600 007.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.08.2011 passed in MCOP No.618 of 2009 by the V Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For Respondents: Mr.R.Neethi Perumal (for R2)

R1- Exparte

JUDGMENT

The appellant is the claimant in MCOP No.618 of 2009 on the file of the V Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai and he filed the present appeal seeking enhancement of compensation awarded by the Tribunal.

2. The appellant/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 17.12.2008.

3. The case of the claimant is that on 17.12.2008 at about 16.00 hours, he was riding his motorcycle bearing registration No.TN-05-U-0717 belonging to the first respondent

and insured with the 2nd respondent. According to the claimant, when he was nearing Ambekar College at Vyasarpadi, a speeding motorcycle bearing registration No.TN-05-U-0717 hit the motorcycle riding by the claimant from behind, as a result of which, he sustained grievous injuries. It is the contention of the claimant that the rash and negligent driving of the driver of the motor cycle bearing registration No. TN-05-U-0717 was the cause of accident and that since the first respondent insured his motocycee with the Insurance Company/ 2nd respondent, both of them are jointly and severally liable to pay compensation to her.

4. Before Tribunal, the first respondent, the owner of the motorcycle remained absent and was set exparte. The 2nd respondent contested the claim petition.

5. The Motor Accident Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs.76,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the claimant contended that the claimant was a embroidering Tailer and he was earning a sum of Rs.300/- per day, and he was not in a position to attend his regular work for 5 months, however the Tribunal fixed the monthly income of the claimant at Rs.5,000/- and awarded a sum of Rs.15,000/- towards " loss of income" only for three months. His further contention is that though Dr.K.J.Mathiazhagan (PW2) had assessed partial permanent disability of the claimant as 35%, the Tribunal, had reduced the same to 25% and awarded only a sum of Rs.1,000/- per percentage. Therefore, he prayed for enhancement of compensation.

7. A perusal of the disability certificate (Ex.P5) shows that Dr.K.J.Mathiyazhagan (PW2) had assessed the partial permanent disability of the claimant as 35%. However, since the PW2 had not treated the claimant and on the basis of the wound certificate, he assessed the partial permanent disability of the claimant as 35%, the Tribunal had rightly fixed the partial permanent disability of the claimant as 25%. The accident took place in the year 2008. Therefore, Rs.2000/- is awarded per percentage. Accordingly a sum of (2000x25) Rs.50,000/- is awarded towards " partial permanent disability" .

8. It is stated that the claimant was earning a sum of Rs.300/- per day, but, there is no proof produced for such income. Therefore, a sum of Rs.5,000/- is fixed as notional income on the prevailing wage rates. On account of the

accident, the claimant definitely would not have been in a position to attend to his work for six months. Hence loss of income is calculated at (5000x6) Rs.30,000/-. Apart from the above amounts, the claimant is also entitled to the following amounts .

Sl.N o	Heads	Amount
1	Partial permanent disability (2000x25)	50,000
2	Loss of income (5000 x 6)	30,000
3	Pain and sufferings	25,000
4	Extra nourishment	10,000
5	Transportation	5,000
6	Attender's charges	6,000
7	Damage to clothes	1,000
8	Medical expenses	5,000
	Total	1,32,000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. It is admitted by both the respondents that on the date of accident, the policy of the vehicle was not renewed, since the cheque issued by the first respondent for the premium of the policy was dishonoured. However, the 2nd respondent admitted that the cancellation of the policy of the vehicle was not intimated to the Motor Transport Officer. Accordingly, the Tribunal had rightly come to the conclusion that the 2nd respondent, Insurance Company shall pay the compensation amount to the claimant at the first instance and then recover the same from the first respondent, the owner of the motor cycle bearing registration No. TN-05-U-0717.

10. In the result,

(i) The appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.76,000/- to Rs.1,32,000/-.

(iii) The New India Insurance Company/2nd respondent is directed to deposit the revised compensation amount of Rs.1,32,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit (less the amount already deposited by them) within 8 weeks from the date of receipt of a copy of this order, at the first instance and then recover the same from the first respondent, the owner of the motor cycle.

(iv) On such deposit being made by the 2nd respondent, the claimant is entitled to withdraw the same, after filing proper application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.R.Neethiperumal, Advocate Sr.101059
+1cc to Mr.K.V.Muthuvisakan, Advocate Sr.101012

CMA.No.3581 of 2013

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srg 06/08/2020

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