

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.3583 of 2013

D.Munu Adhi

...Appellant

vs.

1.M.L.Mani

2.M/s.Reliance General Co. Ltd.,
Vellore Branch Office,
Vellore-2.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.10.2012 passed in MCOP.No.2337 of 2008 on the file of the Motor Accident Claims Tribunal / VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.S.Arunkumar for R2

No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.2337 of 2008 on the file of the Motor Accidents Claims Tribunal / VI Judge, Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.3,19,000/- (restricted to Rs.2,50,000/-) for the injuries sustained by him in a road accident that took place on 16.04.2008.

2. The case of the claimant is that on 16.04.2008, at about 13.15 hours, when he was walking along Old Mahabalipuram road, near Tidel Park, a speeding Tata sumo victa bearing Registration No. TN 55 T 1436 came behind him and hit him, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the Tata sumo victa bearing Registration No. TN 55 T 1436 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, both the owner and the insurer are jointly and severally liable to pay compensation to him.

3. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The learned Motor Accidents Claims Tribunal/ VI Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.42,905/- 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 under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.T.G.Balachandran, learned counsel appearing for the appellant / claimant contended that though Dr.Saichandran (PW2) had assessed the partial permanent disability as 30%, the Tribunal has reduced the same to 10% and awarded a sum of Rs.20,000/- alone towards partial permanent disability, which is very meagre. He also contended that no amount was awarded towards "attender's charges". He therefore prayed for enhancement of compensation.

5. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent / Reliance General Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

6. A perusal of the discharge summary (Ex.P4) issued by Life Line Multi Specialty Hospital shows that the claimant was admitted as an inpatient on 16.04.2008 and discharged on 21.04.2008. The clinical diagnosis shows that the claimant has sustained the following injuries:

"1.Crush injury to left foot.
2.Compound fracture of distal pharynx of left great toe.
3.Fracture of proximal phalynx of proximal phalynx 4th toe left."

It is stated in the discharge summary that there is no need for surgical intervention and the claimant needs repeated dressing and leg elevation. In the facts and circumstances, assessment of partial permanent disability at 30% is definitely on the higher side. However, the Tribunal cannot reduce the same to 10%, especially, when there are crush injuries on his right foot with fracture and therefore 20% is taken up for partial permanent disability. The claimant was working for M/s.Cognizant Technology Solution India Private Limited as a Manager and there is no functional disability. Hence, adopting multiplier method in the instant case is not warranted. In the facts and circumstances of the present case, awarding a sum of Rs.2,000/- per percentage of disability, in the opinion of this Court, would meet the ends of justice.

7. The award passed by this court under various heads is

extracted hereunder:

S.No.	Head	Amount granted
1.	Partial Permanent disability	Rs.40,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Medical bills	Rs.3,402/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.1,000/-
Total		Rs.66,402/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.42,905/- to Rs.66,402/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.42,905/- to Rs.66,402/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / Reliance General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.66,402/- (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.2337 of 2008 on the file of the Motor Accidents Claims Tribunal / VI Judge, Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(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

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To

The Motor Accidents Claims Tribunal,
The VI Small Causes Court,
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.S.Arunkumar , Advocate SR.No. 81208

CMA.No.3583 of 2013

A.SK(15/07/2020)