

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.3725 of 2013

S.Jim Jebakumar

... Appellant/Petitioner

Vs

1.S.Chandrasekar

(R1 remained exparte before the tribunal
hence his presence may be dispense with)

2.United India Insurance Co. Ltd.,

No.33, Whites Road, III Floor,

Royapettah,

Chennai-600 014.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 29.07.2013 in MACTOP. No.5257 of 2011 passed by the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mrs.Subadra for M/s.M.Malar

For Respondents : Mr.M.J.Vijayaraghavan
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, IV Court of Small Causes, Chennai, in MACTOP.No.5257 of 2011 dated 29.07.2013.

2. It is the case of the appellant/claimant that on 14.11.2011 at about 6.45 P.M., the appellant/claimant was riding his motor cycle bearing Reg. No.TN 72 R 5136 from Tambaram to Velachery, near UCO Bank to go to the Rajakilpakkam and at the time, an auto bearing Reg.No.TN 22 BU 5145 driven in a rash and negligent manner came from same direction and dashed against the appellant, thereby the appellant sustained grievous injuries. Thereafter, he was admitted in the private hospital for further treatment. Hence, the appellant has filed a claim petition before the Tribunal against the respondents, claiming a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant examined two witnesses and marked as many as eighteen documents viz., Exs.P1 to P14. On the side of the

respondents, no witnesses was examined and no documents were adduced.

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 Auto. Therefore, the Tribunal has awarded a sum of Rs.1,02,739/- as compensation to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. The learned counsel for the appellant would submit that the appellant is an Assistant Professor of Surgery, aged about 33 years, earning a sum of Rs.50,000/- per month. The award amount of Rs.1,02,739/- passed by the Tribunal is very meager and the same has been passed without considering the injuries sustained by the appellant. The Tribunal has reduced the percentage of the disability, assessed by the Doctor and awarded a sum of Rs.50,000/- and the amount awarded towards extra nourishment and pain and suffering are very meager. Hence, the learned counsel for the appellant prays for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company would submit that the respondent has denied all the averments made by the appellant in the claim petition and filed a counter to that effect. The award passed by the Tribunal at Rs.1,02,739/- is excessive and there is no basis for awarding such compensation. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the respondent and also perused the available materials on record before this Court.

9. The appellant is the claimant and he examined himself as P.W.1 before the Tribunal. He deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the Auto driver. The learned counsel for the second respondent Insurance Company has also submitted that the driver of the auto viz., first respondent has not produced any valid driving license at the time of trial and the evidence of the Doctor (P.W.2) remains unchallenged. The Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the Auto bearing Reg.No.TN 22 BU 5141. Hence, this Court is not inclined to interfere with the said finding.

10. On careful reading of the records, it is seen that the appellant is the claimant, aged about 33 years, at the time of the accident, who is an Assistant Professor. He was not able to do his work after accident, as he has sustained grievous injuries all over his body.

11. On a perusal of the medical report, it is found that the Doctor, who treated the injured, assessed the disability at 40%. But, the Tribunal has reduced the same and awarded a sum of Rs.50,000/- towards permanent disability, which is very low. Considering the injuries sustained by the appellant, this Court is inclined to enhance the award towards permanent disability at same for a sum of Rs.75,000/-. The other heads viz., extra nourishment, transportation, pain and sufferings and loss of earning, respectively, are reasonable and there is no need to interfere with them. The appellant/claimant was admitted in the Government Hospital, as in-patient. Therefore, this Court is awarding a sum of Rs.5,000/- towards attender's charges.

12. The award amount of compensation of Rs.1,02,739/- is enhanced to Rs.1,32,739/- under the following heads :-

Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of earning	15,000/-	15,000/-
2	Transport to Hospital	3,000/-	3,000/-
3	Extra nourishment	3,000/-	3,000/-
4	Medical expenses	11,739/-	11,739/-
5	Pain and Sufferings	20,000/-	20,000/-
6	Disability	50,000/-	75,000/-
7	Attender's charges	----	5,000/-
	Total	1,02,739/-	1,32,739/-

13. With the above modification, the order of Tribunal in MACTOP No.5257/2011 is modified and this appeal is partly allowed.

14. The Compensation amount of Rs.1,02,739/- is enhanced to Rs.1,32,739/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The second respondent -Insurance Company is directed to deposit the entire award amount as ordered by this Court with interest, after deducting the amount if any already deposited, 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 same, on making proper application before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VI)

kmm

To

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

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

+1cc to M/s.M.Malar, Advocate SR.No.10388

C.M.A.No.3725 of 2013

SPD (CO)
GMY (11/11/2020)



WEB COPY



सत्यमेव जयते

WEB COPY