

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.407 of 2013

P.Arjith Raaj

...Appellant/Petitioner

..Vs..

1. G.Kumar

2. United India Insurance Company
Limited, No.167, P.A.Koil Street,
Ayanavaram, Chennai 23.

... Respondents/Respondents

R1 - Exparte before Tribunal

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 28.08.2012, passed in M.C.O.P.No.2580 of 2011, on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu

For Respondents : Mr.S.Arunkumar,
Standing counsel for R2
R1 - Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2580 of 2011 on the file of the II Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai. He filed the above said claim petition under Section 166 of the Motor Accident Claims Tribunal, seeking compensation of Rs.11,00,000/- for the injuries sustained in the

road accident that took place on 07.07.2011, at about 17.00 hours, when the appellant/claimant was riding his motorcycle bearing Registration No.TN 09 AE 3894 from north to south direction in North Boag Road and turned towards west direction opposite to M/s Golden Sports and Recreation Club by giving signal.

2. According to the appellant/claimant, when he was nearing the signal, the first respondent motorcycle bearing Registration No. TN 01 Y 9398 came from south to north direction in North Boag road, belonging to the first respondent and insured with the second respondent, hit the motorcycle bearing Registration No.TN 09 AE 3894, as result of which, he sustained grievous injuries all over his body. He further contended that the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 01 Y 9398 was the cause of the accident since that the motorcycle bearing Registration No.TN 09 AE 3894 was insured with the second respondent, both of them are jointly and severally pay compensation to him.

3.The first respondent remained absent before the tribunal and therefore he was set ex-parte. The second respondent United India Insurance Company Limited, Chennai contested the claim petition. The II Judge, Small Causes Court, Chennai after analysing the evidence on record, the tribunal has awarded a compensation of Rs.6,09,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal the appellant/claimant filed the present appeal under Section 173 of Motor Vehicle Act, 1988 seeking for enhancement of compensation to him.

5.Mr.M.Swamikkannu, learned counsel appearing for the appellant/claimant would contend that when, Dr.Amarnath R.Sowlee (PW2) has assessed the functional disability as 35%, the tribunal has fixed the functional disability only as 30%. His further contention is that the tribunal has awarded a very meagre amount of Rs.25,000/- and Rs.25,000/- have been awarded towards pain and sufferings and loss of amenities respectively.

6.Per contra, Mr.S.Arunkumar, learned standing counsel appearing for the second respondent would contend that the tribunal has taken into consideration, various aspects and awarded just compensation of Rs.6,09,000/- and that the same need not be disturbed at this juncture.

7.The Compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Functional disability and loss of earning power	Rs.4,32,000/-
2.	Pain and sufferings	Rs. 25,000/-
3.	Loss of income	Rs. 90,000/-
4.	Transportation	Rs. 8,000/-
5.	Extra nourishment	Rs. 10,000/-
6.	Damage to clothes	Rs. 2,000/-
7.	Medical expenses	Rs. 7,000/-
8.	Attender's Charges	Rs. 10,000/-
9.	Loss of amenities, mental agony, discomfort and loss of marital status	Rs. 25,000/-
Total		Rs.6,09,000/-

8.The contention of the appellant/claimant is that he was a Senior Captain in M/s.Golden Sports & Recreations Club, Chennai earning salary in the range of Rs.22,000/- - Rs.25,000/- per month as per the salary certificate (Ex.P5). However, the monthly income of the claimant was fixed by the Tribunal at Rs.7,500/- per month. On account of accident, the appellant/claimant would not have been in a position to attend to his regular work atleast for twelve months. Hence, loss of income was fixed at Rs.90,000 ($7,500 \times 12 = 90,000/-$). Therefore, the same need not be interfered with and this Court confirms the same. The appellant/claimant took treatment at ESI Hospital and produced the medical bills for a sum of Rs.6,252/- and the tribunal has awarded a sum of Rs.7,000/- towards medical expenses. Therefore, the same need not be disturbed at this juncture. The learned counsel for the appellant/claimant would submit that the claimant was hospitalised for 48 days. It is seen that the tribunal has fixed a very meagre amount towards attender's charges, loss of amenities and pain and sufferings. This court accepts the contention of the appellant/claimant and the attender's charges is increased from Rs.10,000/- to Rs.25,000/-, loss of amenities is increased from Rs.25,000/- to Rs.75,000/- and pain and sufferings is increased from Rs.25,000/- to Rs.50,000/- respectively. The revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Functional disability and loss of earning power	Rs.4,32,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Loss of income	Rs. 90,000/-
4.	Transportation	Rs. 8,000/-
5.	Extra nourishment	Rs. 10,000/-
6.	Damage to clothes	Rs. 2,000/-
7.	Medical expenses	Rs. 7,000/-
8.	Attender's Charges	Rs. 25,000/-
9.	Loss of amenities, mental agony, discomfort and loss of marital status	Rs. 75,000/-
Total		Rs.6,99,000/-

Thus, the appellant/claimant is entitled to a sum of Rs.6,99,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,

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

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.6,09,000/- to Rs.6,99,000/-, which shall carry interest at the rate of 7.5% per annum.

(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 Insurance Company is directed to deposit the entire amount awarded by this Court equally 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 and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vkr

To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13038

C.M.A.No.407 of 2013

SJ(CO)
CS/09/04/2019



WEB COPY