

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.498 of 2013

S.Mariya Arokiyadoss

...Appellant/Petitioner

-Vs-

1. R.L.Selvam

2. National Insurance Co.Ltd.,
No.378, Mint Street,
Sowcarpet, Chennai 600 079.

...Respondents/Respondents

(R1 was set ex-parte before
the Trial Court

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.3209 of 2011 on the file of the III Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai dated 31.08.2012.

For Appellant : Mr.R.Arundattan
for M/s.C and K Law firm

For Respondent-1: Set exparte
before the Claims Tribunal

For Respondent-2 : Mr. J.Chandran

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal cum III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai, made in M.C.O.P.NoS.3209 of 2011, dated 31.08.2012, the claimant has filed the present appeal seeking for enhancement of the compensation.

2. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3. On 05.08.2011 at about 22:30 hours, when the claimant was walking along the Velacherry 100 ft road in front of Bharath Petrol Bunk from west to east direction, at that time, the first respondent's Vehicle, viz., the Motorcycle, bearing Registration No.TN-09-BB-2728 came from South to North in a rash and negligent manner and dashed against the petitioner and thus caused the accident. In the said accident, the claimant sustained grievous injuries. Hence, he filed a claim petition against both the insured/first respondent and the insurer/second respondent seeking compensation in a sum of Rs.3,00,000/-.

4. The Insurance Company resisted the Claim Petition by filing a counter statement, inter alia contending that, it was the claimant, who contributed to the accident, inasmuch as, he crossed the road in a reckless manner, unconcerned about the vehicular traffic on the road, and this has led to the accident. Therefore, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimant. It was further stated that the compensation amount claimed by the claimant is exaggerated, inflated and speculative, and therefore, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimant examined himself as P.W.1 besides examining one Dr.R.R.Thiagarajan as P.W.2 and marked 6 documents as Exhibits Exs.P.1 to P.6. On the side of the Insurance Company, two witnesses were examined as R.W.1, V.P.Sivaraman, Traffic Crime Record Bureau and R.W.2, Senior Assistant of the Insurance Company and eight documents were marked as Exs.R.1 to R.8.

6. The Tribunal on the basis of both oral and documentary evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Motorcycle, bearing Registration No.TN-09-BB-2728 by the first respondent, and therefore, held that both the owner of the vehicle and the Insurance Company, with whom the Motorcycle was insured, are jointly and severally liable to pay the compensation amount and directed the second respondent/Insurance Company to pay a sum of Rs.1,11,000/- and permitted the second respondent/Insurance Company to recover the same from the first respondent.

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same, as stated supra.

8. The learned counsel appearing for the appellant/claimant submitted that the Tribunal has committed an error in taking the disability suffered by the claimant to be 40% when P.W.2/Doctor

has assessed the disability at 55%. He further submitted that the compensation awarded by the Tribunal under other heads were also meager and requires appropriate enhancement.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal has awarded a just and fair compensation of Rs.1,11,000/- taking into consideration various aspects and the same need not be disturbed at this juncture.

10. Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company.

11. Taking into consideration the nature of injuries sustained by the claimant, viz., Fracture in the left shoulder; Serious head injury, which according to the Doctor/PW-2 had caused restrictions in movement of the left hand and considering the fact that he has also undergone surgery in the head for brain swelling, which resulted in headache, fainting and loss of memory, this Court is of the view that the Tribunal ought to have accepted 55% disability as assessed by the Doctor/PW2 and awarded compensation accordingly. But the Tribunal has committed error in fixing the disability at 40%, which is contrary to the percentage of disability assessed by the Doctor/P.W.2. So far as the amount fixed by the Tribunal towards per percentage of disability of Rs.2,000/ is concerned, the same remains unaltered. Accordingly, this Court fixes the disability at 55% as assessed by the Doctor (PW2), and awards a sum of Rs.1,10,000/- (55% x Rs.2,000/-) towards disability. So far as the compensation awarded by the Tribunal under various other heads are concerned, the same are hereby confirmed.

12. Thus, the total compensation payable to the claimant is as follows:-

S.No	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income for two months	Rs.9,000/-	Rs.9,000/-
2	Transportation	Rs.2,000/-	Rs.2,000/-
3	Extra nourishment	Rs.2,000/-	Rs.2,000/-
4	Medical expenses	Rs.7,000/-	Rs.7,000/-
5	Pain and sufferings	Rs.10,000/-	Rs.10,000/-
6	Damages to clothes	Rs.1,000/-	Rs.1,000/-

S.No	Head	Amount granted by the Tribunal	Amount awarded by this Court
7	Disability of 55% at the rate of Rs.2,000/- per disability	Rs.80,000/-	Rs.1,10,000/-
	Total	Rs.1,11,000/-	Rs.1,41,000/-

13. The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any and thereafter, shall recover the same from the first respondent/owner of the offending Vehicle. The interest awarded by the Tribunal at the rate of 7.5% per annum remains unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

14. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,11,000/- is enhanced to Rs.1,41,000/-. No costs. This Court makes it clear the present case cannot be taken as precedent for other cases.

dpq

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

The III Judge, (Small Causes Court),
Motor Accident Claims Tribunal,
Chennai .

+1cc to Mr.J.Chandran, Advocate, SR.No.25322
+1cc to Mr.C.Munusamy, Advocate, SR.No.25372

C.M.A.No.498 of 2013

Kak (31/07/2019)