

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.712 of 2016

Sundaramurthy

...Appellant/Petitioner

Vs

1.Subramanian

(Since the 1st respondent remained
ex-parte before the Tribunal his
presence may be dispensed with)

2.Reliance General Insurance Co.Ltd,
No.6, Haddoss Road,
6th Floor,
Chennai-6.

...Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 15.12.2011 made in MCOP No.4545 of
2009 on the file of the Motor Accident Claims Tribunal, III
Judge small Causes, Chennai.

For Appellant : Mrs.M.Malar

For Respondents : Mr.S.Arun Kumar for R2

JUDGMENT

This appeal has been preferred by the appellant/claimant
against the award of a sum of Rs.3,85,300/- towards compensation
due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 20.01.2009 at about 10.00 hours, when the
appellant/claimant was travelling as a pillion rider in the TVS
Super XL motorcycle bearing Reg.No.TN-32-S-4550 in the
Thirunavallur Guadilam Road, near Vasantham Mahal Kalayana
Mandapam, an auto-rickshaw bearing Reg.No.TN-32-R-8385 belonging
to the first respondent and insured with the second respondent-
Insurance Company, came from behind in a rash and negligent
manner and hit the motorcycle. Due to the said impact, the
appellant sustained grievous injuries. Stating so, he filed a
claim petition before the Tribunal. On consideration of the

materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.3,85,300/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that the Tribunal ought not to have absolved the second respondent Insurance Company from the liability to pay compensation to the appellant. It is also submitted that the Tribunal has not considered the materials and evidence in proper perspective while awarding the compensation and hence the compensation awarded by the Tribunal has to be enhanced.

5.The learned counsel for the second respondent/Insurance Company has submitted that the Tribunal has rightly dealt with the materials and evidence on record and has correctly awarded the compensation which is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.On a perusal of the entire award passed by the Tribunal, at the outset, this Court does not find any scope to interfere with the same. In fact, as regards the compensation awarded under the head "permanent disability", the Tribunal has relied upon the evidence of PW2-Dr.K.J.Mathialagan, who examined the injured and issued Disability Certificate Ex.P6, assessing the disability at 45%, since the injured suffered fracture in his right leg and external fixation was done to the injured, due to which, there is stiffness in his right leg, movements reduced and there is malunion of fracture. However, the Tribunal, on analysing the materials and evidence, came to the conclusion that the disability assessed by PW2 is on the higher side and reduced the same to 40% and considering the age of the injured at the time of accident as 47 years who was working as mason, fixed the monthly income at Rs.4,500/- and having observed that due to fracture in his right leg the claimant cannot work as mason, the Tribunal adopted the multiplier of 13 and thereby awarded a sum of Rs.2,80,800/- as compensation towards permanent disability. The Tribunal has also awarded a sum of Rs.13,500/- towards loss of income for 3 months, Rs.10,000/- towards transportation, Rs.10,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes, Rs.5,000/- towards medical expenses, Rs.10,000/- towards future medical expenses, Rs.10,000/- towards attender charges, Rs.20,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities of life,

physical discomfort and mental agony. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the injured, adopted the correct multiplier and arrived at Rs.2,80,800/- towards 40% disability. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The second respondent - Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, 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.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
III Judge small Causes, Chennai.

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

+1 cc to M/s.M.Malar, Advocate,sr.7808

+1 cc to Mr.S.Arunkumar, Advocate,sr.88322.

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