

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.737 of 2016

Dr. Arun Sam Pradeep

... Appellant /
Claimant.

Vs.

1. K.Rajendran

2. National Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.751 Anna Salai,
III Floor, Chennai - 2

... Respondents /
Insured & Insurer

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 18.06.2008 passed in MCOP No.2711 of 2003 on the file of the Motor Accident Claims Tribunal, V Judge, Fast Track Court, Chennai.

For Appellant : Mr. A.A.Venkatesan

For Respondents: Mr. G.Anandan, for R-2,
No Appearance, for R-1.

J U D G M E N T

This Appeal is preferred by the claimant / appellant as against the findings on quantum rendered by the Claims Tribunal in MCOP No.2711 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.V, Chennai.

2. It is the case of the claimant that on 07.11.2002 at about 17.00 hours, while he was crossing Pantheon Salai, from East to West direction, the first respondent's Bajaj M-80 Motorcycle bearing Registration No.TN05-F-3873 which came from South to North driven rashly and negligently hit against the petitioner and due to the same, he sustained injuries. As the accident had occurred due to the rash and negligent driving of the first respondent's driver, who being the owner and the second respondent, being the Insurer, they are vicariously liable to pay the compensation to the claimant. Hence the

claimant filed a claim petition claiming a sum of Rs.5,00,000/- as total compensation. After contest, the Tribunal has fastened the liability on the respondents herein and arrived at the total compensation at Rs.80,000/- with interest at the rate of 7.5% per annum from the date of petition. As against the said award, this Appeal is preferred by the appellant.

3. Despite serving notice on the first respondent and his name printed in the cause list, there is no appearance on behalf of him and hence considering the paucity of time, this Court is taking up the Appeal itself on merits.

4. Heard the learned counsel appearing for the appellant and learned counsel for the second respondent / Insurer.

5. There is no dispute with regard to the liability of the second respondent / Insurer in paying compensation to the appellant / claimant as the aspect of liability has not been disputed by the appellant's counsel. Hence, this Court would like to deal with the quantum alone.

6. The learned counsel appearing for the appellant (claimant) submitted that the claimant is a qualified Medical Practitioner and specialized in Child Health and earned Rs.5,000/- per month through private practice, but the Tribunal rejected the evidence and neglected to award any amount under the head loss of earning; that the Tribunal has failed to accept the Medical Bills to the tune of Rs.54,863/- but only awarded Rs.38,000/- under that head without any valid reasons; and in any event, the total compensation at Rs.80,000/- awarded by the Claims Tribunal is on the lower side, which needs substantial increase.

7. Per contra, the learned counsel for the R-2 / Insurer submitted that the Tribunal has considered each and every aspect into consideration and has awarded the compensation; that in fact, the amount awarded under the heads 'disability' and 'pain and suffering' cannot be said to be on the higher side; that the Tribunal has arrived at the quantum, which is in consonance with the injuries sustained by the claimant and hence interference of the same is uncalled for.

8. So far as the quantum of compensation awarded by the Claims Tribunal is concerned, the Tribunal has awarded Rs.38,000/- towards medical bills, excluding the charges paid to Surgeons. This Court is of the view that the bills have been produced for Rs.54,863/-, apart from supplement bills and hence awarding a sum of Rs.58,000/- would be the just compensation payable under this head. Thus, a sum of Rs.58,000/- has been correctly awarded under the head 'medical expenses'.

9. It is borne out from the records that the claimant is a qualified Medical Practitioner and specialized in Child Health and earned Rs.5,000/- per month through private practice, but the Tribunal has rejected his evidence and neglected to award any amount under the head loss of earning, without any rhyme or reason. Atleast for a period of three months, there would have been loss of earning and hence this Court is of the view that awarding a sum of Rs.15,000/- under the head 'loss of earning' would be reasonable.

10. Further on account of permanent disability the Tribunal has awarded Rs.30,000/-. The knee movements of the claimant were restricted upto 30 degrees due to stiffening of muscles and P.W.2-Doctor has deposed that the petitioner suffers pain and he assessed the disability at 45% and Ex.P-14 Disability certificate has also been issued to that effect. Since the accident was of the year 2002, awarding Rs.1,000/- per percentage of disability would meet the ends of justice. If a sum of Rs.1,000/- is awarded per percentage of disability, compensation towards disability works out to Rs.45,000/- and accordingly the amount awarded by the Tribunal towards 'loss of future earnings on account of permanent disability' stands modified to Rs.45,000/-.

11. Further, the Tribunal has awarded sums of Rs.2,000/- towards transportation and Rs.10,000/- towards pain and suffering, which in the opinion of the Court are just.

12. The re-structured breakup details of the total amount of compensation read thus:-

Heads	INR / Rs.
Medical expenses	58,000.00
Transportation expenses	2,000.00
Loss of earning	15,000.00
Loss of future earnings due to permanent disability	45,000.00
Pain and suffering	10,000.00
Total	1,30,000.00

13. In view of the above reasonings, this Civil Miscellaneous Appeal filed by the appellant / claimant stands partly-allowed by enhancing the total amount of compensation to Rs.1,30,000/- from Rs.80,000/-. It is made clear that only for the compensation of Rs.80,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition and for the enhanced amount of Rs.50,000/- the interest at the rate of 7.5% shall be calculated

from the date of filing of the Appeal.

14. The second respondent herein is directed to deposit the modified amount of compensation, as ordered above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the entire amount shall be transferred to the Savings Bank Account of the claimant, through RTGS.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
V Judge, Fast Track Court, Chennai.

2. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

+1cc to Mr.G.Anandan, Advocate, S.R.No. 96312

C.M.A.No.737 of 2016

MR (CO)
GN (26/08/2020)

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