

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1712 of 2018

Paul Raj

...

Appellant/Claimant

Vs

1.K.P.Anandan

2.Bharati AXA General Insurance Co.Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai-600 002.

Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 22.09.2017 made in MCOP No.5780 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.K.Poomalai

For R1 : Ex-parte

JUDGMENT

This appeal has been preferred by the appellant / claimant against the award of a sum of Rs.1,46,300/- towards compensation due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 29.08.2012, at about 19.45 hours, when the appellant was carefully walking along the side of the Royapettah High Road, Chennai, the van bearing Reg.No.TN-04-AA-2776 belonging to the first respondent and insured with the second respondent Insurance Company, came from behind in a rash and negligent manner and dashed against the appellant. Due to the said impact, the appellant sustained grievous injuries. The appellant filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as total compensation. On

consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,46,300/- 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 to have fixed the disability of the claimant at 50% as assessed by the Doctor. He also submitted that the compensation awarded by the Tribunal towards other heads are very meagre and hence the same requires enhancement.

5.The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has considered the materials and evidence available on record in a proper perspective and has awarded the compensation which is just 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.The Tribunal has awarded a sum of Rs.90,000/- towards permanent disability. It is seen that the appellant / claimant sustained the following injuries:

- (a)Chest injury Hemo pneumothorax Right Leg
- (b)Fracture of Left Maxilla
- (c)Fracture of left zygoma
- (d)Fracture of 2,3,5,6,7 Right Fracture Ribs
- (e)CTB Fracture Right Clavicle and head injury.

8.The appellant / claimant was treated as in-patient from 29.08.2012 to 06.09.2012. Even though P.W.2-Doctor fixed the disability at 50%, the Tribunal has reduced it to 30% and awarded a sum of Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. Considering the materials and evidence available on record and the injuries sustained by the claimant, it would be appropriate to sustain the disability fixed by the Doctor at 50%. If that is done, the amount towards disability works out to Rs.1,50,000/-. Accordingly, the amount awarded by the Tribunal towards permanent disability stands modified to Rs.1,50,000/-. The amounts awarded by the Tribunal at Rs.30,000/- towards pain and suffering, Rs.3,000/- towards extra nourishment, Rs.3,000/- towards transport to hospital, Rs.1,000/- towards damages to clothes, Rs.1,800/- towards attender charges, Rs.5,000/- towards medical expenses, Rs.3,000/- towards future medical expenses,

Rs.6,500/- towards loss of income and Rs.3,000/- towards loss of amenities are very reasonable and hence the same are confirmed. Thus, the appellant / claimant is entitled to the modified compensation of Rs.2,06,300/-.

9.It is seen that this Court has condoned the delay of 71 days in filing this CMA, by order dated 12.07.2018, on condition that the claimant has to forego the interest for the delayed period. Hence, it is made clear that only for the compensation of Rs.1,46,300/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.60,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

10.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified amount of compensation, as ordered above, 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-VI)

//True Copy//

Sub Assistant Registrar

gbi/km

To

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

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

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 90091
+1cc to Mr.K.Poomalai, Advocate, S.R.No. 90848

C.M.A.No.1712 of 2018

VBA (CO)
GN (03/09/2020)