

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2272 of 2019

Sekar ... Appellant/Petitioner
Vs.
1.Madhu
2.The National Insurance Company Limited,
Divisional Office-I, L.R.N.Colony,
2nd Floor, Saradha College Road,
Salem-636 007. ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the civil miscellaneous appeal and to enhance the award amount in the judgment and decree dated 08.10.2018, made in M.A.C.T.O.P.No.2519/2016 on the file of the Motor Vehicle Accident Claims Tribunal /Special Subordinate Judge Court No.2, Salem.

For Appellant: Mr.T.S.Arthanareeswaran

For R-1 : Ex-parte before Tribunal

For R-2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the injured appellant against the judgment and decree dated 08.10.2018, made in M.C.O.P.No.2519/2016 on the file of the Motor Vehicle Accident Claims Tribunal /Special Subordinate Judge Court No.2, Salem, stating that the sum of Rs.2,20,933/- awarded by the Tribunal against the claim of Rs.15,00,000/- is not proper and it is very meagre.

2.The brief facts regarding the claim application is that the claimant sustained grievous injury on 03.07.2016, when he was riding his Hero Honda Motorcycle bearing Reg.No.TN39-Z-3009, in Salem Sooramangalam Main Road. At that time, one Auto Rickshaw bearing Reg.No.TN54-H-9515 driven by its driver in a rash and negligent manner came from the opposite direction, dashed against the claimant's two wheeler, as a result of which,

the claimant sustained severe injuries. The claimant has sustained a fracture and surgery was also done to him. Hence, he claimed a sum of Rs.15,00,000/- as compensation for the injuries sustained by him under various heads viz., permanent disability, mental agony, loss of income, etc.

3.The 2nd respondent/Insurance Company in their counter statement apart from denying the mode of accident has also claimed the holding of effective driving license by the driver of the 1st respondent Auto Rickshaw bearing Reg.No.TN 54 H 9515. The 2nd respondent/Insurance Company has further contented that the insured and the insurer of the said Motorcycle are necessary parties to the claim petition and since they were not made as parties, the petition cannot be maintained. The other contention raised by the Insurance Company is that the injured appellant was not wearing helmet at the time of accident, which is against the Motor Vehicle Act and Rules. Hence, the Insurance Company contended that the accident occurred only due the claimant's own negligence and the sum claimed by the appellant/claimant is also an exaggerated one.

4.The Tribunal after analyzing the evidence and documents, the Tribunal has observed that the accident occurred only due to the rash and negligent driving of the driver of the 1st respondent vehicle and awarded a sum of Rs.2,20,933/- as compensation under the following heads.

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Annual Income of the claimant	Rs.1,51,200/-
2.	Pain and Sufferings	Rs.5,000/-
3.	Loss of Amenities and discomfort	Rs.5,000/-
4.	Medical Expenses	Rs.46,733/-
5.	Transport Expenses	Rs.2,500/-
6.	Extra Nourishment	Rs.5,000/-
7.	Attendar Charges	Rs.5,000/-
8.	Damages towards clothes	Rs.500/-
	Total	Rs.2,20,933/-

5.Aggrieved against the award passed by the Tribunal, the appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988. In the grounds of appeal, the appellant/claimant contended that at the time of accident, he was aged about 32 years and was working as a Silver Jewellery Worker, earning a sum of Rs.20,000/- per month. The

appellant/claimant sustained grievous injuries and fractures in the right ankle, middle finger crush injury with fracture in the right hand index finger, medical collateral ligament injury in the right ankle and he was admitted in the Universal Hospital for treatment from 03.07.2016 to 09.07.2016 for 10 days and surgery was also done to him. Whereas, these aspects were not properly considered by the Tribunal while assessing the loss of earning power. In addition to that, the disability determined by the Medical Board was at 15%, but, the Tribunal has taken the disability only at 7.5% and the same is against the established principles and rulings of the High Court and the Hon'ble Supreme Court. The sum awarded for pain and sufferings, expenses to hospital, extra nourishment, attender charges are also very meagre and the Tribunal has committed an error in respect of evidence and documents.

6. Heard the learned counsel appearing for the appellant/claimant as well as the respondents and perused all the materials available on record.

7. Before the Tribunal, on the side of the Appellant/claimant, witness P.W.1 was examined and exhibits Ex.P.1 to Ex.P.11 were marked and on the side of the Respondents, no one was examined and no exhibits were marked and on the side of the Court Ex.C.1 was marked.

8. Though, it is argued by the appellant that the appellant/claimant was working as a Silver Jewellery worker, earning a sum of Rs.20,000/- per month, no documents and evidence were placed before the Tribunal to substantiate his claim. Hence, in the absence of any proof of occupation and income, the Tribunal has taken monthly income at Rs.7,500/- which is very much reasonable. On a perusal of the injuries sustained by the appellant/claimant, it is observed that he has sustained crush injury in the right hand middle finger with fracture PPX with cut injury right index finger, medical collateral ligament injury in his right ankle and surgery was also done to him. Ex.C.1 is the Disability Certificate, in which the disability has been stated as 15%. The Tribunal discussed that the functional disability sustained by the appellant/claimant is only at 7.5% and calculated the future loss of income as $\text{Rs.1,26,000} \times 16 \times 7.5\% = \text{Rs.1,51,200/-}$. This Court finds no error in the said calculation, and the same is confirmed.

9. The grievances of the appellant/claimant is that he was working as a coolie in the said Jewellery shop and due to the injuries sustained by him, he is not able to perform his work as before. In this regard, as discussed earlier, the Tribunal has rightly assessed the disability at 7.5% as functional disability

as per the earlier decision of this Court [In the case of Rajkumar v. Ajaykumar & Another reported in 2010 (2) TN MAC 581 2. In the case of Sandeep Khanuja v. Atul Dande & Another reported in 2017(1) TN MAC 410], and calculate the future loss of income as adopting proper multiplier of '16', therefore the arguments of the appellant cannot be considered. The sum awarded for loss of amenities at Rs.5,000/- and medical bills at Rs.46,733/- as per Ex.P11 are also very much reasonable. Similarly, the sum awarded under the other heads except the head "pain and sufferings" are very much reasonable and proper and the same does not require any modification. As far as the sum awarded for pain and sufferings is concerned, the amount enhanced to Rs.10,000/-.

10. Hence the total compensation payable to the appellant/claimant is as hereunder:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Future Loss of income	Rs.1,51,200/-	Rs.1,51,200/-	Confirmed
2.	Pain and Sufferings	Rs.5,000/-	Rs.10,000/-	Increased
3.	Loss of amenities and discomfort	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Medical Expenses	Rs.46,733/-	Rs.46,733/-	Confirmed
5.	Transport Expenses	Rs.2,500/-	Rs.2,500/-	Confirmed
6.	Extra Nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
8.	Damages towards clothes	Rs.500/-	Rs.500/-	Confirmed.
	Total	Rs.2,20,933/-	Rs.2,25,933/-	Increased by Rs.5,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation award passed by the Tribunal at Rs.2,20,933/- is hereby increased to Rs.2,25,933/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

12. The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, 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 award amount along with proportionate interest and costs, less the amount already withdrawn, if any.
ssi

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Special Subordinate Court No.2,
Motor Accident Claims Tribunal,
Salem.

Copy to:-

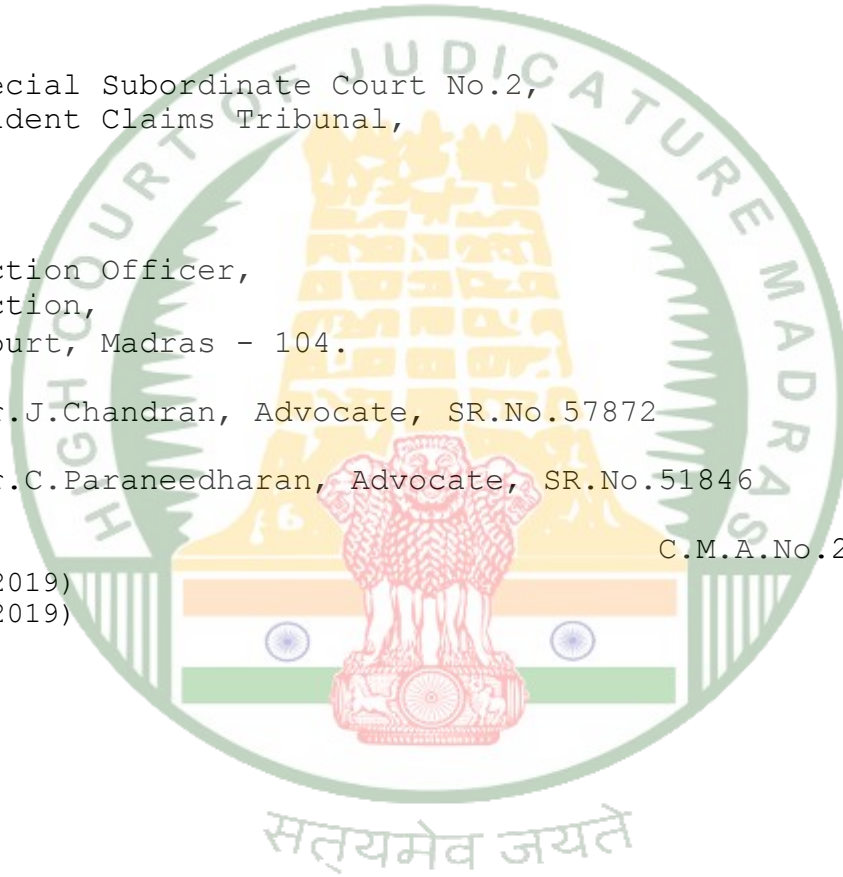
The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.J.Chandran, Advocate, SR.No.57872

+2cc to Mr.C.Paraneedharan, Advocate, SR.No.51846

C.M.A.No.2272 of 2019

Kak(03.10.2019)
GMY(25/11/2019)



WEB COPY