

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3142 of 2008

Tamizhvanan (Minor)

Rep.by his father E.Munusamy

as next friend and Natural Guardian

...Appellant

Vs.

1.Vijay Arvind

(R1 exparte before the Tribunal

Hence notice to R1 may be dispensed with)

2.New India Assurance Co. Ltd.,

Old No.114, New No.204,

Kutchery Road, Mylapore,

Chennai - 600 004.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.03.2008, made in M.C.O.P.No. 2969 of 2002, on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.N.Veerasamy

For Respondents : Mr.S.Manohar

for M/s.Elveera Ravindran for R2

R1 - exparte before the Tribunal

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 2969 of 2002, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. He has filed the above said claim petition under Section 166 of the Motor Accidents Claims Tribunal Rules, 1988, seeking compensation of Rs.9,00,000/- for the injuries sustained by him in a road traffic accident that took place on 01.01.2002.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 13 years and studying 7th standard on the date of the accident.

(ii)

(ii) On 01.01.2002, at about 3.30 p.m, the appellant/claimant was walking along Kamarajar Salai, towards North to South. At that time, the Motor-cycle bearing Registration No.TN 10 A 5047 which was driven by the rider very rashly and negligently came and hit behind the claimant. Thereby, the appellant/claimant sustained multiple fractures. Due to the said accident, the appellant/claimant sustained i) both bone right leg fractures ii) head injury iii) right hand injury and injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to Government Hospital, Royapettah. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The owner of the motorcycle bearing Registration No. TN 10 A 5047, was absent before the Tribunal, and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents, no evidences were adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.57,690/- together with interest at the rate of 7.5% per annum and the second respondent is directed to pay the said compensation within two months from the date of order to the appellant/claimant. Having not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. After hearing both the parties and perusing the materials available on records, it is seen that the rash and negligence fixed on the part of the rider of the said motorcycle is not in dispute and the same is hereby confirmed.

5. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered i)both bone right leg fractures ii) head injury iii) right hand injury and injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital, Royapettah. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

6. The learned counsel appearing for the New India Assurance

Company Limited would contend that the 1st respondent's vehicle was not at all involved in this accident. The alleged accident occurred only due to the negligence of the claimant, at the time of accident with seeing the vehicles on the road hastily, the claimant came and fell on some other vehicle, hence, the respondent/New India Assurance Company is not liable to pay compensation with this claim. The appellant/claimant should prove that the vehicle was insured with this respondent and the rider of the vehicle had valid driving licence at the time of the accident. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable.

7. After hearing both sides and taking note of the fact that Exhibit P8 Disability Certificate and also the evidence of the Doctor P.W.2 Sai Chandran, the "disability" based upon Exhibit P2-Discharge summary and Exhibits P3 and P4-Discharge summaries from 3 hospitals and also Exhibit P8 fixing the disability at 45%. It is seen from the documentary evidence of Exhibits P2 to P4 and Exhibit P5, the appellant/claimant sustained fracture of both bones in the right leg and he was taken treatment at 3 spells enquiry at Government Hospital, Royapettah for 23 days and as per Exhibit P3, he was taken continuous treatment in the same hospital for 14 days and as per Exhibit P4, he was taken continuous treatment in the same hospital as in-patient for 15 days. As per Exhibit P5, he was taken continuous treatment as outpatient.

8. P.W.2 Doctor examined and marked Exhibit P8-Disability Certificate, P9-X-ray and Exhibit P10 -X-ray bill and report. The Doctor has assessed the partial and permanent disability of the claimant at 45%. The appellant/claimant deposed that he is not able to sit and stand. Considering the nature of injuries and the age of the claimant, the Tribunal reduced the percentage of partial and permanent disability sustained by the claimant from 45% to 37% and compensation of Rs.37,000/- is awarded towards 'partial and permanent disability'.

9. Taking into consideration the disability suffered by the claimant, this Court is of the considered view that the permanent disability is calculated at Rs.1,000/- per percentage of disability awarded Rs.45,000/- (45%x1000).

10. However, after going through Exhibits P2 to P4 -Discharge summary and taking into consideration of period of treatment for 52 days as in-patient in hospital and in the interest of justice, Rs.15,000/- is hereby awarded for 'attender charges'.

11. Furthermore, the Tribunal has awarded a sum of

Rs.15,000/- towards 'pain and sufferings' and the same is enhanced to Rs.25,000/-; With regard to 'transport to hospital' this Court enhanced from Rs.2,000/- to Rs.10,000/-; With regard to 'Extra nourishment' this Court enhanced from Rs.3,000/- to Rs.10,000/-; With regard to 'medical expenses', the Tribunal has awarded a sum of Rs.690/- and the same is hereby confirmed. With regard to 'loss of amenities' this Court awards a sum of Rs.10,000/-.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 2969 of 2002 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	permanent disability	Rs. 37,000/-	Rs. 45,000/- (45%x1000)
2.	Pain and sufferings	Rs. 15,000/-	Rs. 25,000/-
3.	Transport to Hospital	Rs. 2,000/-	Rs. 10,000/-
4.	Extra Nourishment	Rs. 3,000/-	Rs. 10,000/-
5.	Medical Expenses	Rs. 690/-	Rs. 690/-
6.	Loss of amenities	----	Rs. 10,000/-
7.	Loss of attender's charges	---	Rs. 15,000/-
	Total	Rs. 57,690/-	Rs. 1,15,690/-

The compensation awarded by the Tribunal is enhanced from Rs.57,690/- to Rs.1,15,690/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii)

(ii) The quantum of compensation awarded by the Tribunal is

enhanced from Rs.57,690/- to Rs.1,15,690/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any.

(iv) The second respondent/New India Assurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.1,15,690/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 2969 of 2002, dated 24.03.2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such payment the amount should be deposited in a Nationalized Bank till the appellant/claimant attains majority and the father is entitled to receive the quarterly interest.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
II Judge, Court of Small Causes, Chennai.

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

+1 CC to Mr.N.Veerasamy, Advocate sr 40442.

+1 CC to Elveera Ravindran, Advocate sr 40700.

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AD(CO)

SP(19/07/2019)