



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.355 OF 2014

V.S.D.Sankaranarayanan @ Sankar ...Appellant / Petitioner

Vs.

1.M.Selvamanai

2.M/s.New India Assurance Company Limited,
Motor Third Party Claims Office,
No.43, Moore Street, Chennai 600 001

...Respondents / Respondents

Prayer : This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 28.10.2013 made in MCOP No.3569 of 2001 on the file of Motor Accident Claims Tribunal, Special Sub Judge II, Small Causes Court, Chennai.

For Appellant	:	Mr.G.Balachandran
For R1	:	No Appearance
For R2	:	Mr.G.Udhaya Shankar

JUDGMENT

This petition has been filed by the appellant/petitioner to enhance the compensation awarded in MCOP No.3569 of 2001 on the file of Special Sub Judge, Small Causes Court at Chennai on 28.10.2013.

2.The appellant is the claimant. The first respondent is the owner of the alleged vehicle involved in the accident and the second respondent is the insurer of the vehicle.

3.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal.

4.The case of the claimant is that on 12.07.2001 at about 23:45 hours when the appellant was proceeding at G.N. Chetty Road to Srinivasan street in his motor-cycle, a Ambassador car bearing Registration No. TN-09-R-2578 came in the opposite



direction in a rash and negligent manner and hit against the motor cycle of the appellant. Due to the impact the appellant sustained grievous injuries. Hence, he filed a claim petition against the owner and insurer of the vehicle seeking Rs.6,00,000/- as compensation. The Tribunal after considering the materials available on record awarded Rs.3,50,000/- as compensation with 7.5% p.a from the date of petition till the date of realization.

5. Not being satisfied with the award passed by the Tribunal, the claimant has come up with this appeal.

6. The learned counsel for the claimant submitted that the accident occurred due to the inattentive attitude of the driver of the car. He further submitted that the appellant was engaged in gunny bag business and due to the fractures sustained in the accident, he was unable to do his work as before the accident. In any event, the compensation awarded by the Tribunal is very low. Hence, he prays to enhance the compensation.

7. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that the injuries sustained by the appellant are simple in nature but the appellant exaggerated the same as permanent disability in order to claim huge amount as compensation. He would further contend that the rider of the two wheeler drove the same without adopting traffic rules and invited the accident, hence contributory negligence should be fixed against the rider of the motor cycle.

8. Before the Tribunal, on the side of the appellant, two witnesses were examined and 28 documents were marked. The respondents have not let in any evidence and not produced any documents before the Tribunal.

9. With regard to negligence aspect, Ex.P.1/ F.I.R supports the case of the appellant and P.W.1/appellant in his evidence stated that the driver of the car is the cause of the accident. There is no eyewitness to the occurrence. Based on the evidence of P.W.1/appellant and Ex.P.1/F.I.R the Tribunal concluded that the driver of the car is the tort feisor for the accident. To controvert the same no new facts or grounds are forthcoming on the side of the respondent. Hence, the award passed by the Tribunal with regard to negligence aspect is perfectly valid in the eye of law and does not warrant interference by this Court and the same are confirmed as such.

10. With regard to quantum, in the absence of any occupation and income of the appellant, the tribunal fixed the notional income of the appellant as Rs.4,500/- . Exs.P.4 to 7/discharge



summary reveals that the appellant has taken treatment in two different hospitals totally for 46 days. Hence, he was unable to go for work atleast for 6 months. Considering the same, the Tribunal quantified Rs.27,000/- (Rs.4,500x 6 = Rs.27,000) as loss of income. Ex.P.15/Disability certificate shows that the appellant had sustained 55% as disability, whereas the fact remains that the Doctor has assessed disability nearly after 11 years from the date of accident, hence the disability suffered by the appellant was taken as 45% and Rs.2,000/- per percentage was determined and quantified Rs.90,000/- (Rs.2,000 x 45%) towards the head Partial and disability. On a perusal of Exs.P.8 and 9/ Medical bills Rs.1,43,000/- was awarded towards Medical expenses. Considering other relevant materials Rs.30,000/-, Rs.10,000/-, Rs.10,000/- and Rs.15,000/- was awarded towards Pain and sufferings, extra nourishment, attendant charges and Transportation charges respectively. At the time of the accident the age of the appellant was 27 years, hence Rs.10,000/- was awarded towards Future prospectus. Thus, the Tribunal arrived Rs.3,50,000/- as total compensation.

11. In view of the above, this Court while re-appreciating the evidence of medical records of the appellant, found that if the appellant would have followed proper precautionary measures, the treatment period would be reduced. The appellant sustained fracture of both bones in right leg, underwent two surgeries and external fixation was also done to him. Therefore, the amount awarded under the head pain and sufferings is very low when compared to the nature of injuries sustained by the appellant and the same is enhanced to Rs.50,000/- from Rs.30,000/- and all other amounts remains unchanged. Thus, the award amount granted by this Court is as follows:

S. No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	For 45% partial and disability rate of Rs.2,000/- per percent	Rs.90,000/-	Rs.90,000/-
2	Pain and sufferings	Rs.30,000/-	Rs.50,000/-
3	Extra nourishment	Rs.10,000/-	Rs.10,000/-
4	Attendant charges	Rs.10,000/-	Rs.10,000/-
5	Transportation charges	Rs.15,000/-	Rs.15,000/-
6	Medical Expenses	Rs.1,43,000/-	Rs.1,43,000/-
7	Loss of income for 6 months	Rs.27,000/-	Rs.27,000/-
8	Loss of future prospects of Life	Rs.25,000/-	Rs.25,000/-
	Total	Rs.3,50,000/-	Rs.3,70,000/-

12. With the above said modification this appeal is partly allowed. The second respondent/Insurance Company is directed to



deposit the amount awarded by this Court with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Order. After making such deposit the appellant is permitted to withdraw the amount, by making proper application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

smn

To

1.The Motor Accident Claims Tribunal,
The Special Sub Judge-II,
Small Causes Court,
Chennai.

Copy To

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

+1cc to M/s.G.Udaya Sankar, Advocate Sr.No.5558

+1cc to M/s.T.G.Balachandran, Advocate Sr.No.5644

C.M.A.No.355 of 2014

BP(CO)
RVM(26/05/2022)