

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.385 of 2014

M.Abu Firnaz

... Appellant

Vs

1.K.Senthilkumar

2. M/s.ICICI LOMBARD General Insurance Co. Ltd
"Chottabhai Centre", 2nd & 3rd Floors,
No.140, Nungambakkam High Road,
Chennai - 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 12.02.2013 in MCOP.No.2255 of 2008 passed by the Motor Accidents Claims Tribunal, XV Additional District Court, Chennai.

For Appellant :Mr.K.Varadha Kamaraj
For Respondents :Mrs.R.Sreevidhya for R2
R1 - Exparte

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, XV Additional District Court, Chennai, in MCOP.No.2255 of 2008 dated 12.02.2013.

2. It is the case of the appellant/claimant that on 15.08.2004, at about 18 hours, he was riding his motor cycle bearing Reg. No.TN04-M-2630 along East Coast Road, near Panaiyur and at that time, the first respondent's car bearing Reg. No.TN07-U-3145 driven by its driver in a rash and negligent manner came from opposite direction and hit the motorcycle, thereby the appellant / claimant sustained grievous injuries. Thereafter, he was admitted at Apollo Hospital for further treatment. Hence, the appellant has filed a claim petition before the Tribunal against the respondents, claiming a sum of Rs.4,50,000/- as compensation.

3. Before the Tribunal, during trial, two witnesses were examined on the appellant / claimant side and five documents viz., Exs.P1 to P5 were marked on his side. On the side of the respondents, no witness was examined and no document was adduced.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's car. Therefore, the Tribunal has awarded a sum of Rs.2,10,000/- as compensation to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. The learned counsel for the appellant would submit that PW2, Dr.Thiyagarajan has assessed the disability at 65% and the Tribunal was wrong in reducing the disability from 65% to 40%. He would also submit that the Tribunal has erred in awarding only a sum of Rs.1,10,000/- towards medical expenses as against the claim of Rs.3,54,867/- and the Tribunal ought to have awarded some amount towards future medical expenses. He also prayed for awarding some amount under the head loss of earning power. Further, he prayed for enhancement of compensation under other heads.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company would submit that the second respondent has denied all the averments made by the appellant / claimant in the claim petition and filed a counter to that effect before the Tribunal. The Tribunal has awarded an excessive amount of Rs.2,10,000/- as compensation and the appellant / claimant has not made out any case for enhancing the award. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the second respondent and also perused the available materials on record before this Court.

9. From the materials available on record, it is seen that the appellant / claimant suffered fracture of mandible, maxilla and nasal bones. It is also seen from the Discharge Summary (Ex.P2) issued by the Apollo Hospital that the appellant / claimant took treatment as an inpatient for 10 days. PW2, Dr. Thiyagarajan assessed the disability at 65%. However, the Tribunal reduced the same to 40% and awarded a sum of Rs.80,000/- towards future damages. Considering the nature of the injuries, this Court is inclined to fix the disability at 45% and the head 'future damages' is hereby modified to 'permanent disability' and a sum of Rs.90,000/- (Rs.2,000/- per percentage of disability) is awarded towards permanent disability. The Tribunal had not awarded any amount towards Transportation, extra nourishment and damage to clothes. Considering the year of the accident, Rs.5,000/-, Rs.5,000/- and Rs.1,000/- are awarded towards the same respectively. From the claim petition, it is seen that the appellant / claimant was aged 23 years, earning a sum of Rs.7,500/- per month by working as a Clerk at Sree Jayalakshmi Transport, Chennai. However, the Tribunal had not awarded any amount towards loss of income. In the absence of evidence and considering the year of the

accident, the notional income of the appellant is fixed at Rs.3,000/- and a sum of Rs.12,000/- is awarded towards loss of income for four months. The appellant / claimant also claimed a sum of Rs.3,54,867/- towards medical bills. The Tribunal after verifying all the bills came to a conclusion that the actual medical bills amount to Rs.1,01,212/- and awarded Rs.1,10,000/- towards medical bills which cannot be said to be meagre and is hereby confirmed. All the other heads awarded by the Tribunal are just and proper and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows;

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Future Damages	80,000/-	Nil
2	Permanent Disability	Nil	90,000/-
3	Pain and suffering, mental agony	10,000/-	10,000/-
4	Attender's charges	10,000/-	10,000/-
5	Medical bills	1,10,000/-	1,10,000/-
6	Transportation	Nil	5,000/-
7	Extra nourishment	Nil	5,000/-
8	Damage to clothes and articles	Nil	1,000/-
9	Loss of income	Nil	12,000/-
	Total	Rs.2,10,000/-	Rs.2,43,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,000/- is hereby enhanced to Rs.2,43,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay Court fee on the enhanced compensation, if any. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2255 of 2008 on the Motor Accident Claims Tribunal, XV Additional District Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined

by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm
To

1. The Motor Accidents Claims Tribunal,
XV Additional District Court, Chennai.

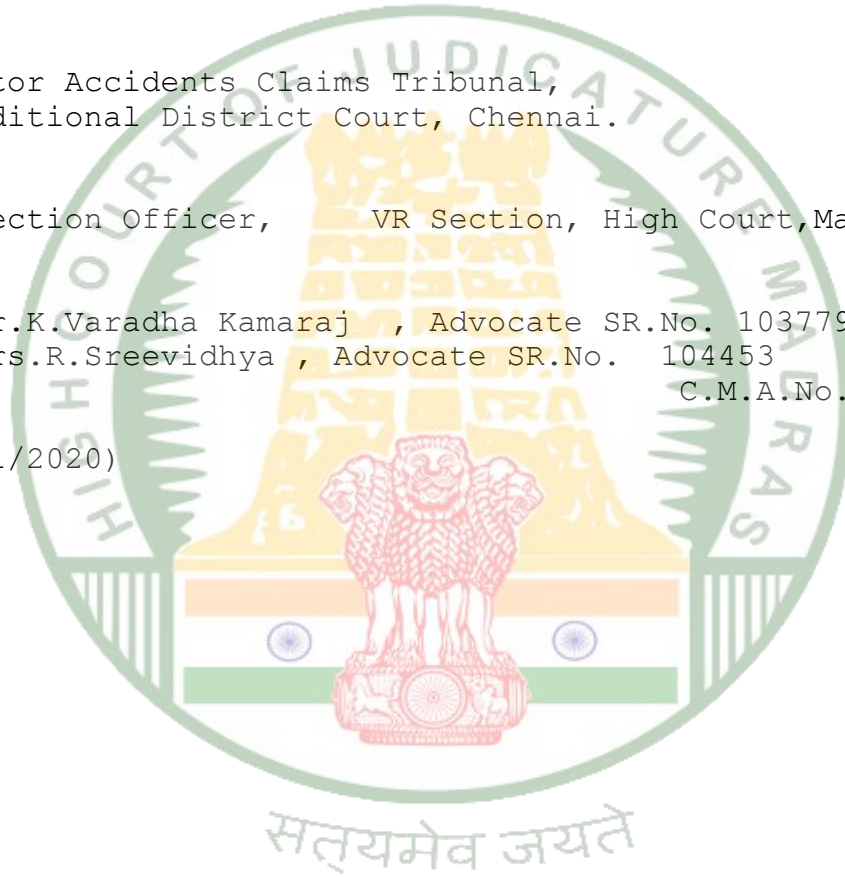
Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.Varadha Kamaraj , Advocate SR.No. 103779

+1cc to Mrs.R.Sreevidhya , Advocate SR.No. 104453

C.M.A.No.385 of 2014

vsn II
A.SK(24/11/2020)



WEB COPY