

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.828 of 2014

S.Venkatesan

... Appellant

..Vs..

1.V.Arul

2.Bajaj Allianz General Insurance Co. Ltd.,
No.25,26, Prince Towers,
College Road,
Chennai.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.07.2013 in M.C.O.P.No.4545 of 2008 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.K.Prem Kumar
For R1 : No appearance
For R2 : Mr.Michael Visuvasum

JUDGMENT

The appellant is the claimant in M.C.O.P.No.4545 of 2008 on the file of the Motor Accidents Claims Tribunal / VI Small Causes Court, Chennai. He filed the claim petition under section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T Rules seeking compensation of Rs.3,13,000/- and restricted to Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 04.09.2008.

2. The case of the claimant is that on 04.09.2008, at about 08.45 p.m., when he was riding his motorcycle bearing Registration No. TN OY 8118 along GWT road, near Enathur, a speeding tempo traveller bearing Registration No. TN 21 AB 0605, belonging to the first respondent which came in the opposite direction, hit the motorcycle, as a result of which, he sustained injuries all over his body. His further contention is that the rash and negligent driving of the driver of the tempo traveller was the cause of the accident and that since the tempo traveller was insured with the second respondent, both the owner and the Insurance Company are jointly and severally liable to pay compensation to him.

3. The first respondent, owner of the tempo traveller remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, Bajaj Allianz General Insurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / VI Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.25,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal.

4. Mr.K.Prem Kumar, learned counsel appearing for the appellant/ claimant contended that the appellant is a Carpenter by profession, earning a sum of Rs.15,000/- per month and that the Tribunal had awarded only a sum of Rs.25,000/- towards compensation, even though, the discharge summary (Ex.P2), clearly shows that the claimant had sustained a comminuted fracture of both bones of his right leg. His further contention is that a steel plate was fixed apart from skin grafting and Dr.M..Saravanabhavanandham (PW2) had issued a disability certificate (Ex.P4) assessing the partial permanent disability as 50%. His specific contention is that the Tribunal without considering all the medical records, awarded only a sum of Rs.25,000/- as compensation.

5. Per contra, Mr.Michael Visuvasum, learned counsel appearing for the second respondent contended that even as per the First Information Report (Ex.P1), the claimant was the wrong doer and award amount cannot be enhanced in the facts and circumstances of the present case.

6. A perusal of a copy of the First Information Report (Ex.P1) clearly shows that the claimant lodged a complaint with the Sub-Inspector of Police, Kanchi Taluk Police Station stating that his motorcycle was hit by a tempo traveller bearing Registration No. TN 21 AB 0605 which came rashly and negligently in the opposite direction. However, in the serial number 7 of the First Information Report, the accused name was indicated as S.Venkatesan (complainant) instead of mentioning the name of the driver of the tempo traveller bearing Registration No. TN 21 AB 0605. Taking advantage of this, it is contended that the claimant alone was responsible for the accident.

7. It is pertinent to point out that when the First Information Report clearly shows that the driver of the tempo traveller was the wrong doer, the observation of the Tribunal that the accident took place due to the rash and negligent driving of the driver of the tempo traveller cannot be found

fault with. Moreover, the Insurance Company has not filed any appeal against the orders passed by the Tribunal.

8. Quantum of compensation: The claimant has sustained a fracture of his right leg and an operation was also performed for fixation of steel plate. Skin grafting was also done. It is to be seen that the claimant did not file his X-ray and its report before the Tribunal and Dr.M.Saravanabhavanandham (PW2) had assessed the partial permanent disability as 50%, even without verifying the X-ray and the report and it is incomprehensible as to how the Doctor has come to the conclusion that the bones are malunited and shortened by one inch. However, the discharge summary (Ex.P2) speaks about the communitated fracture of both bones on the right leg and therefore, in the facts and circumstances, the percentage of disability is assessed as 40% and a sum of Rs.2,000/- per percentage of disability is awarded. Though it is contended that the claimant was a Carpenter by profession, earning a sum of Rs.15,000/- per month, no documentary evidence was adduced by the claimant to prove the same. Therefore, the notional income of the claimant is fixed as Rs.4,500/- per month, since the accident took place in the year 2008. On account of the accident, the claimant would not have been in a position to attend to his work for six months and therefore, a sum of Rs.27,000/- (Rs.4,500/- X 6 months) is awarded towards loss of income.

9. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Loss of income	Rs.27,000/-
2.	Disability	Rs.80,000/-
3.	Medical expenses	Rs.9,104/-
4.	Pain and sufferings	Rs.25,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Future medical expenses	Rs.15,000/-
9.	Damage to clothes	Rs.500/-
Total		Rs.1,68,604/-

10. Thus the compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.1,68,604/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.1,68,604/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, Bajaj Allianz General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,68,604/- (less the amount already deposited) together with interest at the rate of 7.5% per annum on Rs.1,53,604/- from the date of claim petition till the date of deposit to the credit of MCOP.No.4545 of 2008 on the file of the Motor Accident Claims Tribunal / VI Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. No interest is awarded for future medical expenses (i.e., Rs.15,000/-).

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(Arbitration)

// True Copy//

Sub Assistant Registrar

dua/mbi

To

The Motor Accidents Claims Tribunal,
VI Small Causes Court, Chennai.

Copy to: The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.K.Prem Kumar, Advocate, SR.No.77941.
+1CC to J.Michael Visuvasam, Advocate, SR.No.77249.

C.M.A.No.828 of 2014

RP(CO)
CSR: 05.04.2020