

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3245 of 2019

M.Murugesan

.. Appellant/Petitioner

Vs.

1.C.Venkatachalam

2.National Insurance Company Ltd.,
Rep. by its Manager,
Branch Office, 3rd Floor, Anuradha Complex,
Opp. Raja Theatre,
Krishnagiri - 635 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2019 made in M.C.O.P.No.07 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai.

For Appellant : Mr.J.Pradeep
For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 27.04.2019 made in M.C.O.P.No.07 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai.

2.The appellant is claimant in M.C.O.P.No.07 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Uthangarai. He filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.12.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Mahendra Centuro Bike belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.4,40,000/-, at first instance and recover the same from the 1st respondent, as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the

appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the Tribunal has taken notional income of the injured/appellant at Rs.8,000/- is very meagre. The Tribunal failed to see the driving license of the 1st respondent was existence at the time of accident. Without considering the same pay and recovery order was passed. The other grievance raised by the appellant is that the Tribunal ought to have taken the monthly income of the appellant not less than Rs.50,000/- since he was an Advocate practicing for more than 15 years. Hence the sum awarded under the heads disability, transportation, extra nourishment and attender charges are on meagre side and prayed for enhancement of compensation.

4.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the rider of the bike is not having valid driving license at the time of accident and the 1st respondent bike was not insured with the 2nd respondent/Insurance Company and hence the 2nd respondent is not liable to pay compensation to the petitioner. PW1, has not produced the copy of driving license of the driver of the 1st respondent's bike. The negligent aspect was on the rider of the 1st respondent was caused the accident. Further contended that the 1st respondent's bike was insured with the 2nd respondent/Insurance Company and insurance was expired at the time of accident. On perusal of Ex.P3, the said 1st respondent's bike was insured by the 1st respondent with the 2nd respondent under policy No.501304/31/14/6200000908 for the period from 16.05.2014 to 15.05.2014. Hence the accident occurred on 28.12.2014. Thus the 1st respondent's bike was covered with valid insurance policy under Ex.P3. However, the total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.Heard Mr.J.Pradeep, learned counsel appearing for the appellant as well as Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that he suffered fracture of Ribs (Rt) 1st - 9th Rib, fracture of left transverse process of L2 Vertebra, Chronic lacunar infarcts are note din bilateral ganglio - capsular region (brain) and multiple injuries all over the body. The appellant has taken treatment as in-patient at Manipal Hospital, Salem from 28.12.2014 to 31.12.2014 and subsequently again he was admitted in the above said Hospital as in-patient from 05.06.2015 to 13.06.2015 and then he was taken

private treatment in various places and till now under going private treatment. Due to the said injuries the appellant is unable to carry hold any weight and difficult in climbing steps, often gets chest pain and back pain and often gets severe head ache, giddiness loss of memory power. To prove the same, he examined himself as P.W.1 and Medical Board who assessed that the appellant has suffered 40% disability. The Tribunal has taken Rs.3,000/- per percentage and awarded a sum of Rs.1,20,000/- (Rs.3,000/- x 40%) as compensation towards disability which is very reasonable. The appellant has contended that he was an Advocate and was earning a sum of Rs.50,000/- per month. The appellant was aged 40 years at the time of the accident. Considering the nature of injuries sustained by the appellant, the Tribunal has awarded partial loss of income for four months by taking Rs.8,000/- which is meagre. This Court awards partial loss of income for four months by taking Rs.10,000/- i.e. Rs.40,000/- (Rs.10,000/- x 4). Altogether a sum of Rs.20,000/- awarded by the Tribunal towards transport, nutrition and attender charges is very meagre and hence this Court awards a sum of Rs.15,000/- towards transportation, Rs.10,000/- towards extra nourishment and Rs.15,000/- towards attender charges. The sum awarded under various heads are properly considered by the Tribunal and does not require any modification. 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.	Permanent disability	Rs.1,20,000/-	Rs.1,20,000/-
2.	Transportation, extra nourishment and attender charges	Rs.20,000/-	Rs.15,000/- Rs.10,000/- Rs.15,000/-
3.	Pain and sufferings	Rs.75,000/-	Rs.50,000/-
4.	Loss of amenities and enjoyment of life	Rs.75,000/-	Rs.50,000/-
5.	Partial loss of income	Rs.32,000/-	Rs.40,000/-

6.	Damages to clothing and articles	Rs.5,000/-	Rs.5,000/-
7.	Medical bills	Rs.1,13,000/-	Rs.1,13,000/-
	Total	Rs.4,40,000/-	Rs.4,18,000/-

7.In the result, this Civil Miscellaneous Appeal is disposed of. At this juncture, the interest given by the Tribunal 9% per annum is reduced to 7.5% per annum. The compensation awarded by the Tribunal at Rs.4,40,000/- is reduced to Rs.4,18,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

8.The 2nd respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, at first instance and recover the same from the 1st respondent, 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 modified award amount along with interest and costs, less the amount if any, already withdrawn. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.07 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthangari, if the entire award amount has already been deposited by them.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Uthangari.

+1 CC to Mr.J.Pradeep, Advocate sr 75152.

C.M.A.No.3245 of 2019

PVS (CO)
SP(20/04/2021)