

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3202 of 2019

Chenrayaperumal ... Appellant/Petitioner

Vs.

1.Madesh

2.United India Insurance Co., Ltd.,
1st Floor, 146-N, Kumar Complex,
West Car Street, Tiruchengode Taluk,
Namakkal District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2019 made in M.C.O.P.No.449 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

J U D G M E N T

सत्यमेव जयते

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 14.03.2019 made in M.C.O.P.No.449 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The appellant is claimant in M.C.O.P.No.449 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.02.2014. 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 Hero Honda Splendor Motorcycle belonging to the 1st respondent as well as the rider of the TVS XL which came from the opposite direction. The Tribunal fixed contributory negligence in the ratio 50 : 50 on the part of the rider of the TVS XL and the rider of the Hero Honda Splendor motorcycle. However, since the rider and the insurer of the TVS XL was not impleaded, the Tribunal directed the second respondent to pay only 50% of the total compensation to the appellant. Not being satisfied with the above 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 had erred in directing the second respondent to pay only 50% of the compensation and that the Tribunal ought to have directed the second respondent to pay the total compensation to the appellant. The appellant was running a power looms for lease and was earning a sum of Rs.15,000/- per month. At the time of accident the appellant was a pillion rider and aged about 47 years. Due to the said accident, the petitioner sustained grievous injuries and fractures. The nature of injuries sustained by the appellant and period of treatment taken by him were not properly considered by the Tribunal. Hence the sum awarded by the Tribunal under various heads as just compensation is very much on the meagre side. The disability assessed by the PW2/Doctor has to be properly considered by applying multiplier method. The disability certificate was marked as Ex.P7. Due to the injuries sustained by the appellant, he could not able to sit cross legged, walking, standing and claiming up and down of stair case steps. These aspects were not considered by the Tribunal. Further the Tribunal has not awarded any amount towards transport expenses, loss of amenities, attender charges, loss of income and future medical expenses and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the contributory negligence fixed on the part of the 1st respondent is correct and need not to be modified. The Tribunal considering the materials available on record in proper perspective, awarded compensation under different heads, which are not meagre and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the Tribunal has fixed liability based on the evidence as well

as documents filed by both the appellant and respondents herein. Hence the contributory negligence fixed by the Tribunal on the part of the rider of the TVS XL and 2nd respondent each at 50% is very much proper. While determining the compensation, the Tribunal has observed the nature of injuries by verifying the documents Ex.P3/discharge summary, Ex.P4/medical bills, Ex.P8/X-ray bill, Ex.P9/X-ray film and Ex.P10/disability certificate. The nature of injuries are very much discussed and the Doctor has also assessed the disability at 15% which was taken by the Tribunal by awarding Rs.3,000/- per percentage is very reasonable (Rs.3,000/- x 15% = Rs.45,000). Due to the accident, the appellant sustained grievous injuries. The appellant has taken treatment in the hospital as in-patient from 17.03.2014 to 23.03.2014 nearly for 8 days. The Tribunal has not awarded any sum towards attender charges, transport expenses, loss of income and loss of amenities. This Court awards a sum of Rs.10,000/- towards attender charges, Rs.5,000/- towards transport expenses, Rs.10,000/- towards loss of income and Rs.15,000/- towards loss of amenities. The sum awarded by the Tribunal towards pain and suffering Rs.15,000/- is meagre and the same is enhanced to Rs.20,000/-. The sum awarded by the Tribunal towards medical bills and extra nourishment 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.	Disability	Rs.45,000/-	Rs.45,000/-
2.	Medical bills	Rs.53,808/-	Rs.53,808/-
3.	Pain & suffering	Rs.15,000/-	Rs.20,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Attender charges	-	Rs.10,000/-
6.	Transport expenses	-	Rs.5,000/-
7.	Loss of income	-	Rs.10,000/-
8.	Loss of amenities	-	Rs.15,000/-
	Total	Rs.1,23,808/-	Rs.1,68,808/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.1,23,808/- is enhanced to Rs.1,68,808/- 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 entitled to 50% of the award amount i.e. Rs.84,404/-. No Costs.

8.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 50% of the award amount now determined by this Court i.e., Rs.84,404/- 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. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchengode.

+2cc to Mr.C.Paraneedharan, Advocate Sr.76308
+1cc to Mr.J.Chandran, Advocate Sr.75750

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