

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1109 of 2017

K.P.Rajendran

... Appellant/Claimant

Vs.

1. V.Jai Ganesh

(R1 set exparte before the Lower Court
and hence notice may be dispensed with).

2. Iffco-Tokio General Insurance Co.Ltd.,
No.145/131, Ground Floor,
Sahas Embassy, Nelson Manickkam Road,
Mehtha Nagar, Choolaimedu,
Chennai.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.09.2016 made in M.C.O.P.No.5074 of 2014, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.J.Mahalingam

For R2 : Mr.C.R.Krishnamoorthy

For R1 : Ex-Parte

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal, seeking enhancement of the same.

2. The case in brief is as follows:

On the fateful day, ie. on 25.07.2014, at about 10.00 am, the appellant/claimant was ironing the clothes on the right side of platform in front of Door No.191, 1st Street, AL block, Anna Nagar, Chennai, facing South and North direction. At that time, the car bearing Reg.No.TN-01-AF-1937 belonging to the first

respondent and insured with the second respondent herein, came in a rash and negligent manner and dashed against the claimant. Due to the said impact, the he sustained grievous injuries all over the body. He filed a claim petition before the Tribunal claiming compensation of Rs.25,00,000/-. The Tribunal, after considering the oral and documentary evidence available on record, awarded a compensation of Rs.8,53,600/- with interest at 7.5% per annum from the date of petition. Hence, this appeal for enhancement of compensation.

3.The learned counsel for the appellant/claimant has submitted that the Tribunal has awarded a lesser sum of Rs.5,18,400/- towards loss of earning due to disability and hence the same needs to be enhanced. The learned counsel further submitted that the compensation amounts awarded under other heads are very meagre and that the Tribunal did not consider the gravity of injuries suffered by the appellant/claimant, while awarding the compensation and hence, the same warrants interference.

4.Per contra, the learned counsel for the second respondent Insurance Company has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.This is the claimant's appeal seeking enhancement of compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question of negligence and the liability of the second respondent insurance company to pay compensation.

7.As regards the quantum of compensation, the appellant/claimant himself has been examined as P.W.1. He deposed before the Tribunal that he was aged about 57 years and was earning a sum of Rs.15,000/- per month as an Ironer; that due to the accident, he sustained compound Comminuted Grade II fracture of both bones of the left Leg, fracture of left ankle and other serious multiple injuries all over the body. The Doctor, who treated the claimant, was examined as P.W.2 and according to him, the appellant/claimant sustained 50% permanent disability. However, the Tribunal has fixed the permanent disability of the

appellant/claimant only at 40% and awarded a sum of Rs.5,18,400/- towards loss of earning for 40% disability. The said sum has been calculated by taking the monthly income of the claimant at Rs.12,000/- and adopting the multiplier of 9. Ex.P11 is the Disability Certificate and Ex.P12 is the X-ray. Taking note of the evidence of the Doctor and the nature of the injuries suffered by the appellant/claimant, this Court is inclined to take the entire percentage of disability assessed by the Doctor. If that is done, the amount awarded by the Tribunal towards this head works out to Rs.6,48,000/-. Accordingly, the amount awarded by the Tribunal towards loss of earning due to disability stands modified to Rs.6,48,000/-. The Tribunal has awarded a sum of Rs.1,48,380/- towards medical expenses. As per Exs.P4, P5, P6, P7 and P10, the actual medical expenses incurred by the appellant/claimant for his treatment works out to Rs.1,58,782.80 and this Court is inclined to award the said sum towards medical expenses. Accordingly, the amount awarded by the Tribunal towards medical expenses, stands modified to Rs.1,58,780/-. The amounts awarded by the Tribunal towards other heads are confirmed. The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of earning for 50% disability	6,48,000/-
Medical expenses	1,58,780/-
Loss of income	38,400/-
Attender charges	2,400/-
Transport to hospital	5,000/-
Extra nourishment	20,000/-
Damages to clothes	1,000/-
Pain and suffering	50,000/-
Damages for mental and physical shock	20,000/-
Disfigurement	25,000/-
Loss of amenities	25,000/-
TOTAL....	9,93,580/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.9,93,580/- with interest at the rate of 7.5% per annum from the date of petition.

8.In the result, the appeal is partly allowed. No costs. The second respondent/ Insurance Company is directed to deposit the

modified amount of compensation, as ordered above, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

av/km
To

1. The III Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.1109 of 2017

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