

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2052 of 2017

Sivasankaran

... Appellant/ Petitioner

Vs

1.Muralidharan

2.IFFCO-TOKIO General Insurance Co.Ltd.
No.28, North Usman Road
T.Nagar, Chennai-600 017.

Now office at
IFFCO-TOKIO General Insurance Co.Ltd.
No.128, Habibullah Road
3rd Floor, T.Nagar,
Chennai-600 017.

.... Respondents/ Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.11.2013 made in MCOP No.3059 of 2005 on the file of the Motor Accidents Claims Tribunal / VI Small Causes Court at Chennai.

For Appellant : Mr.J.Ramkumar

For Respondents : Mr.C.R.Krishnamoorthy for R2

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.25,000/- towards compensation due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 09.08.2004 at about 12.00 hours, the appellant / claimant was travelling in the motorcycle bearing Reg.No. TN-21-Q-2685 as pillion rider near Visuva Samuthram Coot Road in ECR Salai. At that time, the Qualis car bearing Reg.No.PY-01-W-3969 belonging to the first respondent and insured with the second respondent Insurance Company, came from behind in a rash and negligent manner and dashed against the motorcycle in which the appellant was travelling. Due to the said impact, the appellant sustained grievous injuries. The appellant / claimant filed a claim petition before the Tribunal, claiming a sum of Rs.1,50,000/- as compensation. On consideration of the materials and evidence available on record,

the Tribunal awarded a total compensation of Rs.25,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that even though P.W.2-Doctor assessed the claimant and fixed the percentage of disability of the claimant at 15% and the appellant has made claims under various heads, the Tribunal has awarded only a sum of Rs.25,000/- as total compensation, without taking note of the materials and evidences adduced before the Tribunal, in proper perspective. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The Tribunal has awarded a total compensation of Rs.25,000/- towards injuries and the treatment taken, on the ground that the claimant sustained only simple injuries. But the fact remains that P.W.2-Doctor assessed the claimant and fixed the percentage of disability at 15% under Ex.P4-Disability Certificate. He deposed before the Tribunal that the appellant sustained fracture in the thumb finger of the right leg and because of the same he cannot walk fast or climb stairs or walk for a long distance. Considering the same, it would be appropriate to fix the disability percentage at 10%. Further, he experienced a lot of pain and suffering because of the injuries sustained and he would have required the assistance of an attender for some period to look after him. In these circumstances, this Court is of the considered view that in addition to the amount awarded by the Tribunal, awarding a sum of Rs.10,000/- towards 10% disability at the rate of Rs.1,000/- per percentage of disability, Rs.10,000/- towards loss of amenities and Rs.5,000/- towards attender charges, would meet the ends of justice.

8.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Injuries and treatment taken	25,000/-
10% Disability	10,000/-
Pain and suffering	10,000/-
Attender charges	5,000/-

TOTAL...	50,000/-
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Thus, the appellant / claimant is entitled to the modified compensation of Rs.50,000/-. It is made clear that only for the compensation of Rs.25,000/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.25,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

9.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

10.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM
To

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

+1cc to Mr.C.R.Krishnamoorthy , Advocate SR.No. 88883
+1cc to Mr.J.Ramkumar , Advocate SR.No. 89045

C.M.A.No.2052 of 2017

A.SK(03/09/2020)