

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3203 of 2017

Muthaian ... Appellant /Petitioner

Vs.

1.Subburaj

2.The United India Insurance Co. Ltd.,
M.T.H. Road, Ambattur O.T. Bus Stop Near,
Ambattur, Chennai - 53. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.07.2017 made in M.A.C.T.O.P No.42 of 2009 on the file of Motor Accident Claims Tribunal, Court of Subordinate Judge, Ponneri.

For Appellant : Mr.K.Babu
For R2 : Mr.D.Baskaran

J U D G M E N T

The appellant/claimant filed M.C.O.P.No.42 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Ponneri claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.2008.

2.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent riding of the rider of the two-wheeler belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.90,000/- as compensation to the appellant/claimant.

3.Being dissatisfied with the quantum so awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

4.The learned counsel appearing for the appellant contended that though PW2 - Doctor has assessed the percentage of

disability suffered by the appellant as 60%, the Tribunal has erred in fixing the same at 30% which is unsustainable. The learned counsel further submitted that the appellant was admitted as in-patient in Akash Nursing Home, Chrompet, Chennai from 31.12.2008 to 06.01.2009. Due to the injuries, the appellant would not have attended his business for at least 20 days. However, the Tribunal has not awarded any amount towards loss of earning for the period of treatment. Further, the Tribunal has erred in not awarding any amount towards loss of expectation of life and mental agony suffered by the appellant. The Tribunal has awarded only a sum of Rs.10,000/- towards transportation to hospital as against the claim of Rs.18,000/-. No amount has been awarded towards loss of amenities. The amount awarded by the Tribunal towards pain and suffering is very meagre and the compensation awarded under other heads are also very meager and hence, the same needs substantial enhancement.

5. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company has contended that if the appellant had sustained severe head injury, CT Scan would have been taken to ascertain the nature of injury. However, no document was marked to substantiate the said claim. PW2 is not the doctor who gave treatment to the appellant. Moreover, PW2 has examined the appellant after a period of seven years from the date of accident and issued Disability Certificate. Under such circumstances, the Tribunal has rightly reduced the percentage of disability sustained by the appellant at 30%. Hence, the learned counsel submitted that the compensation awarded by the Tribunal is just and reasonable and the same does not call for any interference by this Court.

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

7. According to the appellant, due to the accident, he has sustained severe head injury and dislocation of shoulder and hence the disability assessed by PW2-Doctor is reasonable. From the deposition of PW2-Doctor, it is evident that no CT Scan was taken to ascertain the nature of injuries sustained by the appellant. But, considering the age, avocation coupled with the nature of injuries sustained by the appellant, this Court is of the considered view that it would be appropriate to fix the disability of the appellant / claimant at 40%. Thus, by awarding a sum of Rs.1,500/- per percentage of disability, the compensation for 40% disability is determined at Rs.60,000/- (1500 x 40). Similarly, the Tribunal has not awarded any amount towards loss of amenities. Hence, a sum of Rs.10,000/- is awarded under this head. Further, the Tribunal has awarded

Rs.11,000/- towards medical bills, Rs.10,000/- towards Transportation to hospital, Rs.4,000/- towards extra nourishment and Rs.20,000/- towards pain & suffering, which in the opinion of this Court, are just and reasonable and hence, the same need not be interfered with. The details of the modified compensation are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability	45,000/-	60,000/-
2.	Medical Bills	11,000/-	11,000/-
3.	Transport to hospital	10,000/-	10,000/-
4.	Extra Nourishment	4,000/-	4,000/-
5.	Pain and Sufferings	20,000/-	20,000/-
6.	Loss of Amenities	-	10,000/-
	Total	90,000/-	1,15,000/-

Thus the appellant / claimant is entitled to the modified compensation of Rs.1,15,000/- with interest at the rate of 7.5% per annum from the date of claim petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

8. In the result, the appeal is partly allowed. No costs. The 2nd respondent-Insurance Company is directed to deposit the modified compensation as ordered above, 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 being made, the Tribunal shall transfer the same to the bank account of the appellant through RTGS, within one week thereafter.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rgr/km

To

1.The Subordinate Judge
Motor Accident Claims Tribunal
Ponneri.

2.The Section Officer,
V.R.Section,
Madras High Court.

+1cc to Mr.K.Babu, Advocate, S.R.No.89424

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 89586

C.M.A.No.3203 of 2017

PA (CO)
GN(11/09/2020)



WEB COPY