

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2816 of 2018

Sekar

.. Appellant/ Petitioner

Vs.

1.V.Chinnavan

2.The Branch Manager,

Bajaj Allianz General Insurance Company Ltd.,

No.11/26, No.3, Second Floor,

Peoples Park, Government Arts College Road,

Coimbatore - 641 018.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.08.2018 made in M.C.O.P.No.644 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri.

For Appellant : Mr.D.Rameshkumar
For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 23.08.2018 made in M.C.O.P.No.644 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri.

2.The appellant is the claimant in M.C.O.P.No.644 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Dharmapuri. He filed the above 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 02.06.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the Bullet belonging to the first respondent and directed the first respondent as well as the second respondent-Insurance Company

to pay a sum of Rs.1,94,400/- as compensation to the appellant/claimant jointly and severally.

4. Not being satisfied with the award amount granted by the Tribunal dated 23.08.2018 made in M.C.O.P.No.644 of 2016, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that due to the accident, the appellant sustained multiple fracture and disfigurement and taken continuous treatment and under went surgery. The Tribunal erred in awarding meager amounts as compensation. The Tribunal has not awarded any compensation towards loss of income. The appellant is entitled to compensation for loss of income for six months. The appellant took treatment in two different hospitals and was taking treatment as in-patient in Bangalore and the Tribunal has not awarded any compensation towards attendant charges. The appellant has spent a sum of Rs.18,000/- towards transport charges and produced bills towards the same which was marked as Ex.P16. The Tribunal erroneously rejected the same and awarded only a sum of Rs.8,000/- instead of Rs.18,000/-. The amounts awarded by the Tribunal towards pain and suffering is meager. The Tribunal has not awarded any amount towards loss of amenities, attendant charges, loss of cloth and future medical expenses and prayed for enhancement of compensation.

6. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not proved that due to the injuries he has suffered loss of income and that he could not do the work as he was doing earlier and appellant is not entitled to any compensation towards loss of income. The bill for Rs.18,000/- produced by the appellant is for transport charges from Kaveripattinam to Bangalore and the same is excessive. The Tribunal considering the fact that appellant travelled from Kaveripattinam to Bangalore, rejected Ex.P16/transport bills and granted a sum of Rs.8,000/- towards transport expenses, which is proper. Similarly the appellant is not entitled for any enhancement towards pain and suffering and any other amounts. The amounts awarded by the Tribunal is not meager and appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused all the materials available on record.

8. From the materials on records, it is seen that due to the injuries sustained by the appellant, he underwent surgery and was taking treatment as in-patient in Sparsh Hospital, Bangalore from 03.06.2016 to 10.06.2016. The Tribunal considering the evidence and Exs.P2, P3 and P15 held that the appellant suffered 32% of disability and awarded compensation at the rate of Rs.3,000/- per percentage, which is not meager. The appellant has produced discharge summary, out-patient register by Sparsh Hospital, Bangalore and medical bills as Ex.P3, P13 and P14. The Tribunal has accepted the medical bills produced by the appellant and awarded a sum of Rs.60,400/- towards medical expenses. The Tribunal has not awarded any amount towards attendant charges, future medical expenses and loss of cloth. Therefore, a sum of Rs.20,000/- towards attendant charges and Rs.2,000/- towards loss of cloth is granted by this Court. The appellant has claimed that he was doing silk business and earning a sum of Rs.25,000/- per month and there is no material to substantiate the said contention. Considering the claim of the appellant, the notional income of the appellant is fixed at Rs.9,000/- per month and a sum of Rs.27,000/- is awarded towards loss of income for three months during and after treatment period. The appellant has contended that Tribunal has not awarded any amount towards loss of amenities and future medical expenses. Therefore, a sum of Rs.25,000/- towards loss of amenities and Rs.25,000/- towards loss of future medical expenses are granted by this Court. The Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering and the same is hereby enhanced to Rs.30,000/-. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meager and the same is enhanced to Rs.20,000/-. The appellant has produced Ex.P16/Transport bills to the tune of Rs.18,000/-, but the Tribunal has awarded only a sum of Rs.8,000/- towards transportation, which is meager and the same is hereby enhanced to Rs.18,000/-. The compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	96,000/-	96,000/-	confirmed
2.	Pain and suffering	20,000/-	30,000/-	enhanced

3.	Transportation	8,000/-	18,000/-	enhanced
4.	Extra Nourishment	10,000/-	20,000/-	enhanced
5.	Medical expenses	60,400/-	60,400/-	confirmed
6.	Loss of amenities	-	25,000/-	granted
7.	Attender charges	-	20,000/-	granted
8.	Future medical expenses	-	25,000/-	granted
9.	Loss of cloth	-	2,000/-	granted
	Total	Rs.1,94,400/-	Rs.2,96,400/-	enhanced by Rs.1,02,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,94,400/- is hereby enhanced to Rs.2,96,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondents 1 & 2 are jointly and severally directed to deposit the enhanced award amount now determined by this Court 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 now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

pds/krk

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr..D.Rameshkumar , Advocate SR.No. 6980
+1cc to Mrs.R.Sreevidhya , Advocate SR.No. 7732

C.M.A.No.2816 of 2018

TP CO
A.SK(28/06/2019)



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