

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.2221 of 2010

R.Kanagasundaram ... Appellant/Claimant
Vs.

1. The Consulate General of Federal
Republic of Germany,
No.49, Ethiraj Salai,
Egmore, Chennai - 8.

2. The New India Assurance Company Ltd,
No.46, Moore Street,
Chennai - 1.

3.S.Jothiprakash ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.3119 of 2001 dated 11.09.2009 on the file of the Additional District and Sessions Judge, Motor Accident Claims Tribunal, (Fast Track Court No.I, Chennai).

For Appellant : Mr. K.Selvaraj.
For Respondents: RR1 & 3 - No Appearance
R2 - Mrs.R.Srividhya.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation.

2. On 31.01.2001 at about 2.15pm when the appellant was proceeding in a Hero Honda Motor cycle bearing Reg.No.TN04 H 9708 from south to north on the midst of the Gemini flyover, a car bearing Reg.No.3CC-3469 came rash and negligently and hit against the appellant, thereby the appellant sustained grievous injuries in right limb, multiple abrasions, fracture in the right leg. The appellant was admitted in the Apollo Hospital Royapuram as inpatient from 31.01.2001 to 13.02.2001. The appellant was 38years at the time of accident and working as Assistant Catering Officer in Shipping Corporation of India and earning a sum of Rs.33,000/-p.m.

3. The second respondent insurance company submits that the accident occurred due to the rash and negligent manner of the driver of the vehicle belong to first respondent. The first respondent fails to submit the claim form and other documents viz., RC book, fitness certificate, permit and driving license of the driver. The accident took place only on account of the negligence of the appellant and the insurance company is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined himself as PW1 and the Doctor as PW2 and marked Ex.P1 to Ex.P19. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard both sides and perused the materials available on record.

6. The learned counsel for the appellant mainly contented that the total disability assessed by the Doctor is 35% and the tribunal has calculated only 30% as disability.

7. The learned counsel appearing for the second respondent insurance company submitted that the tribunal has rightly considered the entire facts and awarded the fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has rightly reduced the 5% for the disability assessed by the Doctor in non fatal accidents under Section 163A (5) second schedule of the M.V.Act, which require no interference by this Court. With regard to the pain and sufferings sustained by the claimant out of the fracture in the leg and he was taking treatment for 11months this Court is inclined to enhance the compensation from Rs.10,000/- to Rs.2,000/-. Considering the other factors this Court enhances the compensation from Rs.2,000/- to Rs.5,000/- each under the heads of transportation and extra nourishment.

9. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the heads of transportation, extra nourishment and pain and sufferings is as follows :-

Sl.No.	Heads	Amount
1	Transportation	5,000
2	Extra nourishment	5,000
3	Medical expenses	1,17,000
4	Pain and sufferings	20,000
5	Loss of leave	4,000
6	Disability and loss of earning power	30,000
	Total	1,81,000

10. The compensation of Rs.1,65,000/- is enhanced to Rs.1,81,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of balance amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsh

To

The Additional District and Sessions Judge,
(Fast Track Court No.I, Chennai).

+1 cc to Mr.K.Selvaraj Advocate sr76

+1 cc to Mrs.R.Sreevidhya Advocate sr465

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