

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2342 of 2010

M.Srinivasan

... Appellant/Petitioner

Vs.

1. Paramasivam

2. National Insurance company ltd.,
Greens Road, Chennai ... 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.1943 of 2001 dated 10.08.2006 on the file of the Motor Accident Claims Tribunal, IV Court of Small causes, Chennai.

For Appellant : Mr.S.Parthasarathy

For Respondents : R1 - Not ready notice
Mrs.N.B.Surekha for R2.

JUDGMENT

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MCOP.No.1943 of 2001 dated 10.08.2006 on the file of the Motor Accident Claims Tribunal, IV Court of Small causes, Chennai.

2. On 12.01.2000 at about 10.00pm, the claimant was travelling as pillion rider in a motorcycle bearing Reg.No.TN07-A-5882 while nearing Palchetty Chatram, Kotturangulam GWT Road, a lorry bearing Reg.No.AP12-T-5099 came from the opposite direction from east to west in rash and negligent manner dashed against the motorcycle caused fracture in the left leg and multiple grievous injuries all over the body. The injured was taken to Government General Hospital, Chennai for treatment. The claimant was working as a coolie on daily wages and earning a sum of Rs.3,000/-p.m. The first respondent is the owner of the lorry and the second respondent is the insurer of the vehicle.

3. The second respondent/insurance company filed counter inter alia stating that the lorry was driven in a slow speed with all cautions. The motorcycle was driven at a great speed and lost the control and dashed against the rear portion of the lorry and caused the accident.

4. In order to prove the case of the claimant, PW1 to PW3 were examined and marked Ex.P1 to Ex.P19. No oral and documentary evidence has been marked on the side of the respondents.

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

6. The learned counsel for the appellant submits that the Tribunal has taken only 40% for calculating the disability out of 65% assessed by the Doctor and seeks to consider 65% towards disability. Out of the accident the claimant is not able to sit squat and walk for long time, the leg has got stiffened and shortage of leg has been assessed. The loss of monthly income has to be considered which is very low, the claimant was not able to do his work as like before the accident. The tribunal has failed to award any amount under the head of attendant charges and the learned counsel seeks to award compensation under this head.

7. The learned counsel for the second respondent/insurance company submits that the Tribunal has rightly considered the entire facts and the nature of work undergone by the claimant awarded a fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has considered the case of the claimant and this Court is inclined to fix 50% towards disability (50%x1000=Rs.50,000). Further, this Court is inclined to fix a sum of Rs.3,000/- towards attendant charges and inclined to enhance the amount on other heads.

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 are as follows :-

Sl.No.	Heads	Amount
1	Disability	50,000
2	Medical bills	30,270
3	Loss of Monthly income	15,000
4	Pain and sufferings	15,000

Sl.No.	Heads	Amount
5	Loss of earning power	10,000
6	Nutrition	5,000
7	Damages to amenities	2,000
8	Transportation	1,000
9	Attendant charges	3,000
	Total	1,31,270

10. The compensation of Rs.97,070/- is enhanced to Rs.1,31,270/-. The 2nd Respondent/Insurance Company is directed to deposit the enhanced Compensation 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 amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimants are permitted to withdraw the entire amount by filing separate cheque application. This appeal has been filed by the claimant with a delay of 245days, this Court condoned the delay by an order dated 20.08.2010, the learned counsel for the second respondent pleaded to deduct the 245days of delay, while calculating the interest. Hence, the delay of 245days in filing the appeal shall be deducted while calculating the interest.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The IV Judge,
IV Court of Small causes,
Motor Accident Claims Tribunal, Chennai.
- 2.The Section Officer,
VR Section High Court, Madras-104.

+1cc to Mr.S.Parthasarathy, Advocate Sr.7411
+1cc to M/s.N.B.Surekha, Advocate Sr.7541

C.M.A.No.2342 of 2010

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srg 30/03/2021