

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3379 of 2009

(Through Video Conferencing)

R.Mari ... Appellant/Petitioner

vs.

1.R.Shanmugam

(R1 was set exparte before the Tribunal)

2. The New India Insurance Co. Ltd.,
No.77, First Avenue, Indira Nagar,
Adyar, Chennai 600 020.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.09.2009 made in M.C.O.P.No.992 of 2008, on the file of the Motor Accident Claims Tribunal, II Judge (II Court of Small Causes) Chennai.

For Appellant : No Appearance

For R2 : Mrs.R.Sreevidhya

R1 : Exparte

J U D G M E N T

There is no representation on behalf of the appellant, despite the case being listed on several occasions. The 1st respondent was set exparte before the Tribunal. Since no adverse orders are proposed to be passed against the appellant who is the contesting party in this Civil Miscellaneous Appeal, it is taken up for final hearing and disposal. The learned counsel for the second respondent - Insurance Company is present and assisted the Court.

2. The claimant is the appellant in this Civil Miscellaneous Appeal. In this appeal, the appellant/claimant seeks for enhancement of the compensation awarded by the Motor Accident Claims Tribunal (II Court of Small Causes) Chennai in its Judgment and Decree dated 30.09.2009 made in M.C.O.P.No.992 of 2008.

3. The Tribunal has awarded a total sum of Rs.1,14,095/- as compensation together with interest at 9.5% p.a from the date of claim petition till the date of deposit, to the

appellant/claimant vide impugned Judgment and Decree after considering on record.

4. The appellant/claimant met with an accident on 12.10.2007 when he was travelling as a pillion rider on a motorcycle bearing Reg.No.TN-07-AX-5584, belonging to the 1st respondent and insured with the 2nd respondent - Insurance Company. It was alleged that the insured motorcycle was driven by its rider in a rash and negligent manner at a high speed and hit against the centre median and caused the accident, as a result of which, the appellant sustained injuries and all over his body.

5. As per the claim petition, the appellant suffered the following injuries :

- i)) Multiple fractures over left knee, ankle and foot.
- ii) Serious head injury.
- iii) Abrasions over left hand.
- iv) Contusion over right leg.
- v) Multiple injuries all over the body.

6. I have heard the learned counsel for the appellant/claimant and the 2nd respondent Insurance Company and I have also perused the impugned Judgment and decree passed by the Tribunal.

7. While awarding the aforesaid compensation, the Tribunal has considered the monthly income of the appellant-claimant Rs.4,000/- as against the claim of the appellant was earning a sum of Rs.10,010/- in the claim petition.

8. Before the Tribunal, the appellant/claimant had let in evidence through PW2 physician who assessed the permanent disability of the appellant as 65%. The Tribunal has however considered 35% towards partial permanent disability for computing the compensation and at the rate of Rs.1500/- per 1% and has awarded a sum of Rs.52,500/- as compensation.

9. Considering the nature of injuries suffered by the appellant/claimant and since the accident is of the year 2007, the Tribunal ought to have considered higher compensation due to the injury suffered by the appellant at the rate of Rs.2000/- per percentage. Accordingly, there shall be an enhancement of compensation by a sum of Rs.70,000/- (2000 x 35 = 70,000) under the head of disability albeit towards injury.

10. The Tribunal has taken the monthly income of the appellant as Rs.4,000/-. It appears to be on the lower side. The Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, had notionally fixed the income of a vegetable vendor as Rs.6,500/- for the year 2008. Since the accident is of the year 2007, notional income of the appellant can be considered as Rs.7,500/- p. m following the decision of the Hon'ble Supreme Court in the said case.

11. Since the appellant would have been out of work for six months on account of the injury, I am inclined to increase the compensation towards loss of income to Rs.45,000/- (Rs.7,500 x 6) from Rs.16,000/- (Rs.4,000 x 4)

12. The Tribunal has awarded a sum of Rs.14,000/- towards pain and suffering. It appears to be slightly on the lower side. Therefore it is enhanced Rs.20,000/-. The amount awarded under the other heads are reasonable and are therefore confirmed.

13. Under these circumstances, the compensation under the heads awarded by the Tribunal is enhanced and modified as follows:-

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Permanent disability (Injured)	Rs. 52,500	Rs. 70,000	Enhanced
2	Pain and sufferings	Rs. 14,000	Rs. 30,000	Enhanced
3	Loss of income	* Rs. 16,000	* Rs.45,000	Enhanced
4	loss of amenities	Rs. 10,000	Rs. 10,000	Confirmed
5	Loss of expectation of life	Rs. 10,000	Nil	
6	Medical Expenses	Rs. 5,595	Rs.5,595	Confirmed
7	Damage to cloth and articles	Rs. 1,000	Rs. 1,000	Confirmed
8	Extra nourishment	Rs. 2,000	Rs. 2,000	Confirmed
9	Transport expenses	Rs. 2,000	Rs. 2,000	Confirmed
Total		Rs. 1,14,095	Rs. 1,65,595 rounded off to Rs.1,66,000/-	Enhanced

* Rs.16,000 (Rs.4,000 x 4)

<https://hcservices.ecourts.gov.in/hcservices/> * Rs.45,000 (Rs.7,500 x 6)

Interest at 9.5% p.a. appears to be on the higher side. Therefore, it is reduced to 7.5% p.a.

14. Therefore, the 2nd respondent Insurance Company is directed to deposit the abovesaid amount of compensation of Rs.1,66,000 together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kkd

To:-

1.The II Judge,
The Motor Accident Claims Tribunal
(II Court of Small Causes) Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 36818

C.M.A.No.3379 of 2009

MP (CO)
GN (07/06/2021)