

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2020

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.1482 of 2011

P.Padma Priya

... Appellant/Petitioner

Versus

1.A.Prakash

[R1 remained ex-parte]

2.The New India Assurance Co.Ltd.,
No.45, Moore Street, 5th Floor,
Chennai - 600 001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in Judgment and Decree dated 20.12.2010 made in M.C.O.P.No.4971 of 2006 on the file of the Motor Accidents Claims Tribunal (III Small Causes Court) Chennai.

For Appellant : Ms.S.Jayanthi

for Mr.N.M.Muthurajan

For Respondents: Mr.R.V.Sivaraj

for J.Michael Visuvasam (for R2)

: Ex-parte - R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 20.12.2010 passed in M.C.O.P.No.4971 of 2006 on the file of the Motor Accidents Claims Tribunal, (III Small Causes Court), Chennai.

2.For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3.It is a case of injury. The case of the claimant is that:

On 07.11.2006 at about 16.16 hours, when the claimant/appellant was riding in a TVS XL Super Motorcycle bearing Registration No.TN-02-U-3321, from T.Nagar to Kodambakkam, near to Raghavendra Kalyana Mandapam, the first respondent's Van bearing Registration No.TN-21-U-9623 came from the same side in a rash and negligent manner, and dashed against

the said TVS XL Super Motorcycle, in which the claimant was travelling. Due to the said accident the claimant fell down and sustained grievous injuries. The accident occurred due to the negligent act of the driver of the first respondent. The first respondent being the owner of the vehicle and the second respondent being the insurer, both of them are liable to pay the compensation to the claimant. For the injury sustained, the claimant had claimed a total sum of Rs.6,00,000/- as compensation, from the respondents.

4.Before the Tribunal, the first respondent remained ex-parte.

5.Opposing the claim made by the claimant, by filing counter, the second respondent/Insurance company denied the accident itself and stated that the claimant has to prove that the Van bearing Registration No.TN-21-U-9623 was insured with the second respondent and that the driver, who had driven the van, was having a valid driving licence at that time of accident. The accident had occurred only due to the negligent act of the appellant/claimant. The claimant should prove the age, occupation, monthly income and the nature of the injuries. The quantum of compensation claimed by the claimant under various heads is very high. The claim of the claimant is exorbitant and thus, the second respondent/the Insurance Company sought for dismissal of the Claim Petition.

6.Before the Claims Tribunal, the claimant/appellant [P.Padma Priya] examined herself as P.W.1 and one Doctor K.J.Mathiazhagan, who issued disability certificate to the claimant was examined as PW.2. The claimant had exhibited 13 documents, as Ex.P1 to Ex.P13, to prove her claim. On the side of the respondents neither oral nor documentary evidence were produced.

7.The Claims Tribunal, on the basis of available records, found that the first respondent's Van driver alone cause the accident and thus awarded a sum of Rs.50,000/- along with 7.5 % interest per annum as compensation to the injured (claimant) and directed the second respondent to pay the compensation. Aggrieved over the same, the claimant has come forward with the present appeal, praying to enhance the award amount.

8.Today, when the appeal is taken up for hearing, I have heard the arguments of Ms.S.Jayanthi, learned counsel for the appellant, Mr.R.V.Sivaraj, learned counsel appearing for the second respondent and also perused the records carefully.

9.In respect to the aspect of the negligence and liability, findings arrived at by the Claims Tribunal was not disputed on

the side of the second respondent. The claimant has filed this appeal, only against the quantum of compensation arrived at by the Claims Tribunal.

10.The learned counsel for the appellant would contend that under the various heads, the Claims Tribunal awarded very meager amount as compensation. Particularly, at that time of fixing the compensation under the head of disability sustained by the claimant, the Tribunal has taken Rs.1000/- alone as compensation for one percentage of disability. In this regard, he would contend that since the alleged accident had happened in the year 2006, the said amount fixed by the Claims Tribunal, is very meager.

11.Considering the said submissions with the relevant records, as per the disability certificate issued by the Doctor/PW.2, the claimant sustained 30% of partial permanent disability. The Claims Tribunal, while at that time of calculating the compensation had come to the conclusion that the claimant sustained only 25% of partial permanent disability. It appears from the Judgment rendered by the Claims Tribunal that no reason was adduced for reducing the percentage of the partial permanent disability. Only by holding that there is possibility of 5% difference between the assessment of the disability fixed by the doctor, the Claims Tribunal has come to the conclusion that the claimant sustained 25% of disability.

12.In these aspect, I am of the considered view that for reducing the percentage of the disability, the Claims Tribunal has to show some relevant materials to substantiate the finding rendered by it. But, in this occasion, the Claims Tribunal has not stated about the relevant circumstances that the claimant sustained only 25% of partial permanent disability. However, on the side of the second respondent, there is no dispute that the claimant has sustained fracture and admitted in the hospital for three days as in-patient. On that aspect, no amount was granted under the head of Attendant charges. Hence, this Court feels that to grant a sum of Rs.3000/- towards Attendant charges and for 30% disability a sum of Rs.30,000/- is hereby awarded. Considering the hospitalization, transportation charges of Rs.3,000/- is enhanced to Rs.5,000/-. This Court is of the opinion that expect these modifications, no change is necessary in the award passed by the Tribunal. Therefore, considering into those aspects, the compensation arrived at by the Claims Tribunal has been modified and enhanced as follows:-

Description	Amount awarded by Tribunal	Amount modified and awarded by this Court
Loss of income	Rs.3,000/-	Rs.3,000/-

Description	Amount awarded by Tribunal	Amount modified and awarded by this Court
Transportation	Rs.3,000/-	Rs.5,000/-
Extra nourishment	Rs.3,000/-	Rs.3,000/-
Damage to clothes	Rs.500/-	Rs.500/-
Medical expenses	Rs.5,500/-	Rs.5,500/-
Pain and sufferings	Rs.10,000/-	Rs.10,000/-
Disability	Rs.25,000/-	Rs.30,000/-
Attendant charges	-	Rs.3000/-
Total	Rs.50,000/-	Rs.60,000/-

13.In the result,

[i] The Civil Miscellaneous Appeal is partly allowed.

[ii] The appellant/claimant in M.C.O.P.No.4971 of 2006 is entitled to the award amount of Rs.60,000/- [Rupees Sixty thousand only] along with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The first respondent [Owner] and second respondent [Insurance Company] are jointly and severally liable to pay the compensation to the appellant/claimant and this Court directs to deposit the award amount along with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

[iv] On such deposit, the appellant [claimant] in this appeal is permitted to withdraw the same, by moving necessary application before the Tribunal.

[v] The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Motor Vehicle Accidents Claims Tribunal/
III Small Causes Court, Chennai.

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

+1cc to Mr.J.Michel Visuvasam, Advocate SR.18353

C.M.A.No.1482 of 2011

PP (CO)
CB(07/04/2021)



WEB COPY