

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1175 of 2012

M.Ranjith Kumar

.. Appellant/Petitioner

Vs.

1.D.Kumarasamy
(1st respondent remained ex-parte
before the Trial Court)

2.M/s. National Insurance Co. Ltd.,
Plot.No.C-20, AD-1, Second Avenue,
Anna Nagar, Chennai-600 040

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2011 made in M.A.C.T.O.P.No.4508 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.N.M.Muthurajan

For R1 : Ex-Parte

For R2 : Mrs.N.B.Surekha

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 26.04.2011 made in MACT.O.P.No.4508 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4508 of 2007 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.06.2007.

3.The case of the appellant is that on 04.06.2007 at about 10.40 hours, the appellant was riding a Motorcycle bearing Regn.No.TN-21-E-3372 proceeding from T.Nagar to

Thousand lights along GN Chetty road. While so he was proceeding near the Little Flower School, a van bearing Regn.No.TN-01-Q-9623 came from behind, which was driven in a rash and negligent manner, dashed against the appellant's Motorcycle. As a result, the appellant fell down and sustained injuries.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Van bearing Registration No.TN-01-Q-9623, belonging to the first respondent, insured with the second respondent, and directed the second respondent to pay a sum of Rs.3,83,800/- as compensation to the appellant on behalf of the first respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.Heard Mr.N.M.Muthurajan, learned counsel for the appellant and Mrs.N.B.Surekha, learned counsel appearing for the second respondent.

6.A perusal of the records shows that the claimant has sustained compression fracture of calceum in the right foot, compression fracture of right tarsal bone, dislocation of tarsal bone, acute injury with skin loss in the right foot, right heel pad avulsion, injury in tendons and soft tissue and multiple injuries all over the body. Dr.K.J.Mathiazhagan (PW2) has assessed the partial permanent disability as 40%. The percentage of disability can be reduced to 1/3rd with reference to the whole body. Hence, the trial Court has rightly reduced the same to 15%. It is seen that the appellant was working as ADD-Designer and earned a sum of Rs.10,000/- per month at the time of accident. He has produced Ex.P10, certificate of employment and Ex.P11, Salary Bill issued by Sandesh Ltd., to show his monthly income. The total earnings of the appellant was Rs.9,600/-. The total deduction was Rs.576/- and Net pay is Rs.9024/-. Medical Reimbursement Rs.800/- and total amount paid was Rs.9,824/- at the time of accident, the basic pay of the appellant was Rs.4,500/-, HRA was Rs.3,100/- and totally Rs.7,700/-. Other allowances are not taken into account to fix the monthly earning of the appellant. Hence, the monthly income of the appellant is fixed as Rs.8,000/-. It is seen that the appellant has lost his earning power to some extent in his future. The functional disability is fixed as 15%. The age of the appellant is fixed as 28 years. The monthly earning is fixed as Rs.8,000/-. As per the second schedule of M.V.Act, the multiplier applied is 17, as per Sarala Varma's Case. Hence, taking into account his future loss of income of earning power, the Tribunal has rightly awarded a sum of Rs.2,44,880/- towards 'permanent disability' (Rs.8,000 X 12 X 17 X 15%), which is hereby confirmed by this Court. The appellant has sustained injuries as mentioned above. Ex.P6 reveals that he has taken treatment as in patient for a period

of 27 days. Hence, the Tribunal has awarded a sum of Rs.24,000/- (8,000 X 3) towards 'loss of income' during treatment. By taking into account the treatment period of the appellant, this Court is of the view that the amount awarded by the Tribunal is just and reasonable and the same is hereby confirmed. The Tribunal has awarded a sum of Rs.1,000/- and Rs.2,000/- towards 'transportation' and 'extra nourishment' respectively. The amount awarded under these heads are very meager and they are enhanced to Rs.5,000/- each. The Tribunal has awarded a sum of Rs.20,000/- towards 'pain and sufferings' and the same is hereby enhanced to Rs.30,000/-. The amounts awarded by the Tribunal under other heads are confirmed. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	2,44,800/-	2,44,800/-	confirmed
2.	Loss of income during Treatment	24,000/-	24,000/-	confirmed
4.	Transportation	1,000/-	5,000/-	enhanced
5.	Extra Nourishment	2,000/-	5,000/-	enhanced
6.	Damages to Clothes and Articles	1,000/-	1,000/-	confirmed
7.	Medical Expenses	91,000/-	91,000/-	confirmed
9.	Pain and Sufferings	20,000/-	30,000/-	enhanced
	Total	Rs.3,83,800/-	Rs.4,00,800/-	enhanced by Rs.17,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,83,800/- is hereby enhanced to Rs.4,00,800/-, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent is 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn, if any. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
II Small Causes Court,
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to M/s.M.B.Surekha, Advocate SR.7542

+1cc to Mr.N.M.Muthurajan, Advocate SR.7822

C.M.A.No.1175 of 2012

BS (CO)
CB(06/01/2021)



WEB COPY