

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1902 of 2013

S.Jaffar ... Appellant/Petitioner
Vs.

1.Sivaranjitha
R-1 Notice may be dispensed with

2.The United India Insurance Co Ltd,
Motor III Party Claims Office,
No.38, Anna Salai, Chennai-2. ... 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.196 of 2005 dated 13.10.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Poonamallee.

For Appellant : Mr. Y.Jayanthi Baskar
for Mr.J.Mahalingam
For Respondents : Mr.C.Paranthaman, for R2
R1 - Set Exparte.

J U D G M E N T

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

2. This appeal has been filed against the judgment and decree made in MCOP.No.196 of 2005 dated 13.10.2011 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Poonamallee by raising the following grounds :-

The case of the appellant is that on 01.01.2005 at about 5.45am, the claimant was riding Motor cycle bearing Reg.No.TN04 F 1060 by the left side of the T.H.Road, a tanker lorry bearing Registration No.MSM 1368 driven by its driver in a rash and negligent manner, dashed against the claimant, due to this the claimant fell down and sustained grievous injuries and fractures. At the time of accident the claimant was employed as Second Class Tug Master in a ship and earning a sum of Rs.30,000/-p.m. He was admitted in the Sugam Hospital for a period from 01.01.2005 to 07.01.2005 then he was referred to Stanley Medical College Hospital from 10.01.2005 to 13.01.2005.

Due to the injuries sustained by him, he could not carry on his avocation as before the accident.

3. The learned counsel appearing for the second respondent/insurance company denied all the allegations contained in the claim petition and submitted that the claimant has to prove that the lorry bearing No.MSM 1368 has been driven by the driver in a rash and negligent manner.

4. In order to prove the case of the claimant, the claimant examined PW1 and PW2 and marked Ex.P1 to Ex.P10. 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 contended that the PW2/Doctor who examined and assessed the disability of the claimant to the tune of 40% as a result of the injuries sustained there is contusion and concussion of brain. The claimant is taking regular tablet to prevent fits. He lost his smelling sensation and he is unable to feel and smell, and suffering from headache and neck pain which spreads to his face and limbs, thereby suffering from giddiness and unconsciousness. The appellant also clearly deposed that since the Doctors had advised him that he will be suffering from continues vomiting if he continues his job in the ship. The Tribunal failed to adopt the multiplier method 8 instead of 6.

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 fixed the age of the claimant on the basis of Ex.P9 and adopted the multiplier method 6 for fixing the income of the claimant. With regard to the pain and sufferings sustained by the claimant out of the fracture and he was taking treatment for 11days in this hospital this Court is inclined to enhance the compensation from Rs.15,000/- to Rs.2,000/- and for extra nourishment this Court enhances the award from Rs.5,000 to Rs.10,000/-. Considering the other factors this Court inclined to award a sum of Rs.5,000/- towards attendant charges.

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 extra nourishment and pain

and sufferings are as follows :-

Sl.No.	Heads	Amount
1	Injury	1,62,000
2	Transportation	5,000
3	Medical bills	27,736
4	Pain and sufferings	20,000
5	Extra nourishment	10,000
6	Loss of income during hospitalisation	15,000
7	Attendant charges	5,000
	Total	2,44,736

10. The compensation of Rs.2,29,736/- is enhanced to Rs.2,44,736/-. 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.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

tsh

To
The Motor Accident Claims Tribunal,
Sub Court, Poonamallee.

+1 cc to M/s.T.Mahalingam Advocate sr4663
+1 cc to M/s.C.Paranthaman advocate sr4115

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mr (co)
aa02/09/2020