

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1941 of 2013

P.Karthik

.. Appellant/Petitioner

Vs.

1. P.Mani

2. ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, Wall Tax Road,
Park Town, Chennai-3.

.. Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.11.2012 made in MACTOP. No.2828 of 2011, on the file of Motor Accidents Claims Tribunal/XVII Additional District and Sessions Judge, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mrs.R.Srividhya - For R2

(R1 Exparte before the Tribunal)

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/XVII Additional District and Sessions Judge, Chennai in MACTOP. No.2828 of 2011, dated 06.11.2012.

2. It is the case of the appellant that on 19.07.2011 at about 10.30 hours, while the appellant/claimant was riding a bicycle bearing Registration No.TN 09 BK 2038 at Ashok Nagar, 6th Avenue, opposite Metro Water from East to West direction, at the time, a TATA Ace Van bearing Registration No.TN 09 BJ 2491, driven by its driver, in a rash and negligent manner, dashed against the appellant. As a result of which, the appellant had sustained grievous injuries and thereafter, he was admitted in the C.M.O. Perambur Railway Hospital, Chennai as inpatient and underwent three surgeries. Hence, the appellant filed a claim petition before the Tribunal against the owner of the offending

vehicle and its insurer, claiming a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his claim, the appellant has examined two witnesses viz., P.W.1 and P.W.2 and marked as many as eight documents viz., Exs.P1 to P8. On the side of the respondents, there was no witness examined and there was no evidence adduced.

4. After analyzing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Van. Hence, the Tribunal has awarded a sum of Rs.2,00,000/- as compensation to the claimant, to be paid by the respondents jointly and severally together with interest at the rate of 7.5%.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal.

6. The learned counsel for the appellant even though raised various grounds in the appeal for enhancement of compensation, at the time of arguments, he contended that the appellant was a student in Vaishnava College and he was doing part time job, earned about Rs.5,000/- per month as salary, due to the accident, he sustained grievous injuries all over the body and his right leg was fractured. For which, he could not able to go to college and he could nor able to do any work. The compensation awarded by the Tribunal a sum of Rs.2,00,000/- is very meager. The learned counsel for the appellant contended that the accident took place on 19.07.2011. The appellant was admitted in the Railway hospital from 19.07.2011 to 02.11.2011 as in patient and underwent three surgeries. PW2 assessed the disability at 55% for the right knee and 30% for the right foot. But Tribunal has failed to consider the same, fixed the percentage of the disability at 75% and awarded Rs.1,50,000/- towards permanent disability. The Tribunal has not awarded any amount towards damages to clothes and attender's charges, and the award amounts towards transportation, extra nourishment and pain and sufferings are too low and hence, the learned counsel prayed for enhancement of the compensation.

7. Per contra, the learned counsel appearing for the respondent/ Insurance Company submitted that the accident was not occurred due to rash and negligent driving of the driver of the van. The appellant had sustained simple injuries, the same is being exaggerated for the purpose of the case. The appellant himself responsible for the accident and there is no fault on the part of the driver. The nature of injuries and treatment taken by the appellant was considered in detail and the

compensation awarded by the Tribunal is highly excessive and there is no necessity to enhance the amounts and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the respondent and also perused the available materials on record before this Court.

9. From the materials on record, it is seen that P.W.2 Doctor has certified that the appellant suffered 55% of disability for the right knee and 30% for the right foot. The Tribunal considering the evidence of P.W.2, came to the conclusion that the percentage of disability certified by P.W.2 Doctor is excessive. The Tribunal independently considering the Accident Register, disability certificate, X-ray and evidence of P.W.2, held that the percentage of disability is 75% and awarded Rs.1,50,000/- towards permanent disability. The Tribunal has given valid reason for reducing the percentage of disability and there is no error in the said reasoning. Subsequent to the accident, the appellant was admitted in a Railway hospital from 19.07.2011 to 02.11.2011 and three surgeries were performed. The Tribunal has rightly awarded a sum of Rs.40,000/- towards pain and sufferings. Considering the nature of injuries and treatment taken by the appellant, the appellant is entitled for a sum of Rs.10,000/- towards attender's charges and Rs.20,000/- towards loss of amenities. The amount of Rs.5,000/- towards transportation and extra nourishment passed by the Tribunal is too low. Therefore, this Court is inclined to modify the same to Rs.10,000/- towards transportation and extra nourishment each. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Permanent disability	1,50,000/-	1,50,000/-
2.	Pain and sufferings	40,000/-	40,000/-
3.	Transportation	5,000/-	10,000/-
4.	Extra nourishment	5,000/-	10,000/-
5.	Attender charges	---	10,000/-
6.	Loss of amenities	---	20,000/-
	Total	2,00,000/-	2,40,000/-

10. With the above modification, this appeal is partly

allowed. The first and second respondents are jointly and severally liable to pay compensation of Rs.2,40,000/- to the appellant with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

The Motor Accidents Claims Tribunal/
XVII Additional District and Sessions Judge,
Chennai.

Copy To

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

+1cc to Mr.M.Malar, Advocate, S.R.No.523

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 884

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C.M.A.No.1941 of 2013

RJI (CO)
GN(15/09/2020)

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