

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1959 of 2013

Kannan

...Appellant/Petitioner

Vs

1. M/s.S.V.P.Fashion,
No.1, Dr.Ranga Road,
Mylapore,
Chennai- 600 004.

2. Reliance General Insurance Co.Ltd.,
No.6, 6th Floor, Reliance Housr,
Haddows Road, Nungambakkam,
Chennai-600 006.

.... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.A.C.T.O.P.No.110 of 2009 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, dated 31.01.2013 and for enhancement of compensation.

For Petitioner : Mr.A.Munusamy

For Respondents : Mr.Arunkumar for R2
R1 - Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 31.01.2013 made in M.A.C.T.O.P.No.110 of 2009 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

2. The appellant herein is the claimant in M.A.C.T.O.P.No.110 of 2009 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai. He filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.11.2008.

3. Case of the appellant is that on 13.11.2008 at 13.30 hours, when the appellant was riding his bike bearing registration No.TN-07-AX-2670 at Dr.Ranga Road, the first respondent's Motorcycle bearing Registration No.TN-07-AR-1355 came in a rash and negligent manner, hit against the appellant's motorcycle, thereby the appellant sustained grievous injuries all over his body.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider-cum-owner of the motorcycle belonging to the first respondent, insured with the second respondent and directed the second respondent to pay a sum of Rs.1,19,500/- as compensation to the appellant/claimant on behalf of the first respondent.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel for the appellant would submit that the appellant herein met with an accident on 13.11.2008 and suffered fractures in both left leg bones, besides other severe injuries. He took treatment as inpatient for a period of three months together underwent surgeries as evidenced by Ex.P1 and Ex.P3. Even now, he is taking treatment as outpatient. Even after prolonged treatment, the appellant is not in a position to do his normal avocation and day to day affairs owing to the physical disabilities. The Court below erred in deciding the quantum of compensation payable to the appellant herein when it is rightly found that the negligence was on the part of the first respondent's vehicle. He would further submitted that the Court below did not award any amount towards future medical expenses, while it is manifestly proved that the appellant has to take continuous follow up treatment. Further, the learned trial Court judge did not consider the gravity of injuries as well as the impact and consequences of the injuries and no award has been passed under the heads of loss of income and mental agony to the family members, service of attenders and loss of amenities. The Court below erred in awarding lesser sum towards permanent disability. The Doctor who assessed the disablement of the appellant as 45% was examined as P.W.2 and he marked the X-Ray and the disability certificate as Ex.P6 and Ex.P7 respectively. Further, the learned trial Judge ought to have adopted multiplier method for computing loss of earning power. In any event, the Tribunal ought to have awarded a total sum of Rs.3,00,000/- instead of a sum of Rs.1,19,500/-.

7. Per contra, the learned counsel appearing for the 2nd respondent relied on the counter filed by the 2nd respondent and

stated that the appellant claiming an exorbitant amount of Rs.3,00,000/-, is not proper and valid. The learned counsel would further submit that the age, occupation and income of the petitioner is not admitted and hence, the petition is not maintainable, neither on facts nor on law. The accident had occurred only due to the rash and negligence of the appellant. The first respondent is not responsible for the accident. Hence, this respondent is not liable to pay compensation to the appellant. The age, income, place and time of accident, nature of injuries, place and period of treatment are denied. The amount of compensation claimed are highly excessive and hence, he prays for dismissal of the present appeal.

8. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

9. From the materials on record, it is seen that P.W.2/Doctor assessed that the appellant suffered 45% disability. The Tribunal reduced the same and fixed 40% and granted a sum of Rs.80,000/- (40 X 2,000) which is just and reasonable and the same is hereby confirmed. It is seen that the appellant was working as hotel server and delivery boy and earning Rs.10,000 PM. Without any proof to show his income, the tribunal has awarded a sum of Rs. 13,500/- (4,500*3) towards "loss of income" for a period of 3 months, the same is hereby enhanced to RS.25,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards "Transportation" which is very meager and the same is hereby increased to Rs. 10,000/-.The Tribunal has awarded a sum of Rs.5,000/- towards "Extra Nourishment" the same is hereby confirmed. The Tribunal has awarded a sum of Rs.1,000/- towards "Damages to cloths and articles", the same is hereby confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards "Medical expenses" , the same is also hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- towards "Pain and suffering" which is meagre and the same is hereby enhanced to Rs.20,000/-. The Tribunal did not award any amount towards "Attender charges" the court is inclined award a sum of Rs.5,000/- for the same. The amounts awarded by the Tribunal under other heads are confirmed. 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)	Award confirmed or enhanced or granted
1.	Permanent disability	80,000/-	80,000/-	confirmed
2.	Pain and Suffering	10,000/-	20,000/-	enhanced

3.	Medical expenses	5,000/-	5,000/-	confirmed
4.	Transportation	5,000/-	10,000/-	enhanced
5.	Extra Nourishment	5,000/-	5,000/-	enhanced
6.	Loss of earning for 3 months	13,500/-	25,000/-	enhanced
7.	Damages to Cloths and articles	1,000/-	1,000/-	confirmed
8.	Attendant charges	-	5,000/-	granted
	Total	Rs.1,19,500/-	Rs.1,51,000/-	enhanced by Rs.31,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,19,500/- is hereby enhanced to Rs.1,51,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal, II Judge,
Court of Small Causes,
Madras.

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

+1cc to Mr.Munusamy, Advocate Sr.14862
+1cc to M/s.S.Arunkumar, Advocate Sr.15350

C.M.A.No.1959 of 2013

kj[col]
srg 11/03/2021



WEB COPY