

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2884 of 2011

K.Siva @ Sivanathan

.. Appellant / Claimant

Vs.

1.Sakunthala

2.The New India Assurance Company Ltd.,
375, Anna Salai, Saidapet,
Chennai - 600 015. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2006 made in M.C.O.P.No.345 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Chengalpattu.

For Appellant : Mr.K.Varadha Kamaraj for
Mr.S.Sai Shankar

For R2 : No appearance

R1 : Not ready in notice

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 15.03.2006 made in M.C.O.P.No.345 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Chengalpattu.

2.The appellant is claimant in M.C.O.P.No.345 of 2004 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Chengalpattu. He filed the said claim petition claiming a sum of Rs.2,25,000/- as compensation for the injuries sustained by him in the accident that took place on 05.06.2004.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.40,000/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant contended that the appellant was aged 45 years at the time of accident and was earning a sum of Rs.5,000/- per month by working as a mason. Due to the accident, the appellant sustained grievous injuries on his head, fracture in frontal bone, lacerated injury measuring 5x3x2 cm over right forehead and multiple injuries all over the body. The appellant examined P.W.2/Doctor to prove the same. P.W.2/Doctor has assessed the disability of the appellant as 25%. The learned counsel further contended that the Tribunal erred in overlooking the first treatment at Government Hospital, Royapettah, whereas the appellant was referred to Government Hospital, Chennai for further treatment and Ex.P2/Accident Register and Ex.P3/Discharge summary was marked to prove the same. The Tribunal has not taken note of the fact that the appellant sustained lacerated injury over right forehead and also fracture over the frontal bone. The Tribunal failed to take into consideration Ex.P3/discharge summary and erred in fixing the permanent partial disability taking into consideration only Ex.P7/disability certificate which was issued after one and half years. The Tribunal erred in holding that the head injury had not resulted in any loss of earning power, particularly when the appellant proved to be a mason in building construction. The Tribunal has not awarded any amounts towards attendant charges, damages to clothes, loss of amenities and transport expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Though notice has been served on the second respondent and their name is printed in the cause list, there is no representation either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused all the materials available on record.

8. It is the contention of the appellant that he sustained grievous injuries on his head, fracture in frontal bone, lacerated injury measuring 5x3x2 cm over right forehead and multiple injuries all over the body. The appellant examined one

Dr.Dharmaraj as P.W.2, who assessed the disability of the appellant as 25% and issued Ex.P7/disability certificate. The Tribunal accepting the same, awarded a sum of Rs.25,000/- towards injuries. The accident is of the year 2004 and the amount awarded by the Tribunal is meagre. The appellant is entitled to a sum of Rs.37,500/- at the rate of Rs.1,500/- per percentage (Rs.1,500/- X 25%) towards 25% disability.

9.According to the appellant, he was aged 45 years at the time of accident and was earning a sum of Rs.5,000/- per month by working as a mason. He has not filed any document to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal awarded a sum of Rs.2,000/- towards loss of wages, which is meagre. The accident is of the year 2004 and hence, a sum of Rs.3,500/- is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work atleast for a period of four months. Therefore, the appellant is entitled to a sum of Rs.14,000/- (Rs.3,500/- X 4) towards loss of wages for four months. The appellant was given first aid in Government Hospital, Royapettah and thereafter he has taken treatment as in-patient in Government General Hospital, Chennai from 05.06.2004 to 12.06.2004. The Tribunal not awarded any amounts towards attendant charges, loss of amenities, transport expenses and damages to clothes. Considering the period of treatment and nature of injuries sustained by the appellant, a sum of Rs.5,000/-, Rs.10,000/-, Rs.5,000/- and Rs.5,00/- are awarded towards attendant charges, loss of amenities, transport expenses and damages to clothes respectively. The amount awarded by the Tribunal towards extra nourishment is meagre. Hence, the same is enhanced to Rs.5,000/-. The amounts awarded by the Tribunal towards pain & sufferings and medical expenses are just and reasonable and hence the same are hereby 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 or reduced
1.	Disability	25,000	37,500	Enhanced
2.	Pain and sufferings	10,000	10,000	Confirmed
3.	Extra nourishment	2,000	5,000	Enhanced

4.	Loss of wages	2,000	14,000	Enhanced
5.	Medical expenses	1,000	1,000	Confirmed
6.	Attendant charges	-	5,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Transport expenses	-	5,000	Granted
9.	Damages to clothes	-	500	Granted
	Total	Rs.40,000/-	Rs.88,000/-	Enhanced to Rs.48,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.40,000/- is hereby enhanced to Rs.88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
The Motor Accidnt Claims Tribunal,
Chengalpattu.

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

+1 cc to Mr.S.Sai Shankar, Advocate Sr.No. 23630

C.M.A.No.2884 of 2011

VD (CO)
RMP (06/01/2021)



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