IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1400 of 2016

Mohammed Mothilal ... Appellant/Petitioner

vs.

1.S.Kumar

2.ICICI Lombard General Insurance Company Ltd.,
No.140, Nungambakkam High Road,
Chennai-34. ... Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2012 passed in M.C.O.P.No.3271 of 2010 on the file of the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant: Mr.K.Varadha Kamaraj

For Respondent-1 : Ex Parte

For Respondent-2 : Mr.K.K.Ramakrishnan

J U D G M E N T

The quantum of compensation fixed by the Motor Accidents Claims Tribunal is sought to be enhanced in the present Civil Miscellaneous Appeal.

2. The claim petition filed by the appellant reveals that the accident occurred on 02.06.2010 at about 12.30 hours at Anna Salai opposite to Indian Overseas Bank, Central Office, Chennai. D-6 Anna Square Police Station registered a case in Crime No.190/T-/2010 and the appellant has stated that he sustained injuries of fracture of both bone right leg, fracture of right hand, head injury and multiple injuries all over the body. The claim petition was filed, seeking compensation of Rs.5 lakhs.

3. The Tribunal adjudicated the issues and the following points are formulated by the Tribunal for consideration:-

(1) Whether the accident had happened due to the rash and negligent driving of the rider of the Motor Cycle bearing Registration No.TN-05-AM-8388 ?

(2) Whether the respondents are liable to pay the compensation ?

(3) Whether the petitioner is entitled for the compensation ?

(4) To what relief the petitioner is entitled to ?

4. With reference to liability regarding point No.1, the Tribunal arrived a conclusion that the accident had happened due to rash and negligent driving of the first respondent's vehicle driver and accordingly, proceeded for fixation of compensation in point No.2. While fixing compensation in point No.3, the Discharge Summary reveals that the appellant had taken treatment as inpatient in the Apollo Hospital from 02.06.2010 to 06.06.2010. He had suffered closed fracture of both bones at right leg with fracture proximal humerus right. Intramedullary nailig at right tibia was done and closed manual reduction at right humerus was done. Ex.P-3 Discharge Summary shows that he had taken inpatient treatment at the above hospital from 29.07.2010 to 01.08.2010 for delayed union of right shaft of tibia. Open reduction and internal fixation with lag screw fixation and bone grafting tag was done. Ex.P-4 Discharge Summary shows that he had taken inpatient treatment at the above hospital from 20.09.2012 to 22.09.2012 for implant removal. Ex.P-10 Disability Certificate issued by PW-2 Dr.Mathiazhagan also speaks about the same.

5. The appellant was aged about 48 years at the time of accident. The age was ascertained based on the Discharge Summary Ex.P-2. He was working as Senior Manager in Indian Overseas Bank and earning Rs.25,000/- per month. The salary certificate was marked as Ex.P-6, which shows that the appellant was drawing a gross salary of Rs.37,834/- and the net salary of Rs.21,260/- per month. Accordingly, the Tribunal fixed the monthly income of the appellant as Rs.25,000/- and granted compensation on various heads. Loss of income was assessed at Rs.1 lakh and the permanent disability was assessed at Rs.1 lakh. The permanent disability was assessed based on the disability certificate, which shows that the disability is 50%. However, the Tribunal fixed Rs.2,000/- per percentage and this Court is of the considered opinion that the said amount deserves to be enhanced as Rs.3,000/- per percentage as per the judgment of this Court. In all other aspects, the fixation of compensation by the Tribunal is in consonance with the established principles and there is no perversity as such.

6. Thus, this Court is inclined to enhance the compensation under the Head of Permanent Disability and Rs.3,000/- per percentage is fixed. Thus, the amount of compensation of Rs.1 lakh granted for permanent disability is enhanced to Rs.1,50,000/-. Thus, the total compensation is enhanced to Rs.4,95,393/-.

7. Thus, the judgment and decree passed by the Tribunal in MCOP No.3271 of 2010 dated 18.12.2012 is modified and the enhanced compensation of Rs.4,95,393/- is awarded as per the details given below:-

	Rs.
Loss of Income	1,00,000/-
Transport to Hospital	5,000/-
Extra Nourishment	10,000/-
Damage to Clothing	1,000/-
Medical Expenses	2,04,393/-
Pain and Sufferings	25,000/-
Permanent Disability	1,50,000/-
	4,95,393/-

8. The second respondent/ICICI Lombard General Insurance Company is directed to deposit the entire award amount with accrued interest, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/ claimant is permitted to withdraw the entire award amount with interest by filing an appropriate application and the payments are to be made only through RTGS. The appellant/claimant is liable to pay the additional court fee for the enhanced compensation.

9. Accordingly, C.M.A. No.1400 of 2016 stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The III Judge,
Small Causes Court-cum-
The Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.18878

CMA No.1400 of 2016

pvs[co]
srg 17/09/2020