

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2272 OF 2013

K.Ramesh

.. Appellant/Petitioner

Versus

1. V.Gajendran S/o.Velusamy

2. The Oriental Insurance Co. Ltd.,
No.216, Prakasam Salai, Oriental House,
HUB, II- Floor, Broadway Road,
Chennai - 104.

(The 1st respondent was set ex-parte before the
Tribunal) .. Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decree dated 09.07.2008 made in M.C.O.P.No.4898 of 2003 on the file of the Motor Accident Claims Tribunal, VI-Small Causes Court, Chennai.

For Appellant : Mr.R.S.Anand
of M/s.Anand and Suryas

For 2nd Respondent : Mr.D.Bhaskaran

R1 - Exparte

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J U D G M E N T

This appeal has been filed by the appellant against the Judgment and order in M.C.O.P. No.4898 of 2003 dated 09.07.2008 on the file of the Motor Accident Claims Tribunal, VI-Small Causes Court Judge, Chennai, seeking for enhancement of compensation.

2.The facts of the case briefly are as under:

On 06.08.2003 at 8.30am, while the claimant/appellant herein was riding his bicycle on Thiruvattiyur High Road, a two wheeler bearing Registration No.TN-09-H-3416 driven by its driver in a rash and negligent manner hit the claimant's bicycle on its behind. Consequently, the claimant/appellant herein was thrown out of his cycle. The Claimant/appellant sustained grievous injuries and was treated as inpatient in the Government Stanley Hospital from 06.08.2003 till 18.08.2003. Due to the injuries in the accident, the claimant/appellant herein has filed claim petition before the Tribunal in M.C.O.P.No.4898 of 2003 seeking for compensation of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only). However, the Tribunal has awarded a compensation of Rs.1,07,000/- (Rupees One Lakh and Seven Thousand Only) as compensation to the claimant/appellant herein.

3. Being aggrieved over the aforesaid award, the claimant/appellant herein has preferred the present appeal seeking for enhancement of compensation.

4. The learned counsel for the appellant would submit that the Tribunal ought to have passed award of compensation under the all heads as sought by the appellant. However, the Tribunal has awarded a meagre amount of compensation without taking into consideration the age and avocation of the appellant as well as severe injuries sustained by him in the accident. Hence, this Court may be pleased to award as sought by the appellant.

5. On the contrary, the learned counsel for the Insurance company would submit that the Tribunal has awarded the compensation in the aforesaid claim petition taking into consideration both oral and documentary evidences in a proper prospective which cannot be considered as meagre compensation. The appellant/claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard, the learned counsel for both sides and perused entire oral and documentary evidence placed before this Court. 1st respondent/owner of the vehicle was set ex-parte before the Tribunal as well as before this Court.

7. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not dispute. The entitlement of the claimant is alone disputed seeking for enhancement of compensation after considering the age and avocation as well as injuries sustained by the claimant/appellant herein.

8. During the trial before the Tribunal, on the side of the appellant P.W.1 & P.W2 were examined and Ex.P1 to Ex.P11 were marked. However, neither witness was examined nor any document was marked on the side of the 2nd respondent to prove their side.

9. On perusal of the entire records, it is seen that the Tribunal has awarded compensation relying on the Judgment in "United India Insurance Company Ltd., Tiruchengode Vs.Veluchamy and another" reported in 2005(1) CTC 38. Further, no witness was examined and no document was marked on the side of the 2nd respondent to disprove the entitlement of the claimant/appellant herein. Hence, this Court is not inclined to interfere with the award passed by the Tribunal under the heads of Permanent disability, Loss of earning and pain and sufferings along with others. However, since the appellant has sustained severe injuries namely both bone fracture right leg compound grade II, abrasion right foot and abrasion left leg in the accident, his cloth would have been damaged; he should have been taken care by family members; he would have spent money to join bone fracture, vide Ex.P3 as medical expenses and he would have been admitted and taken treatment in the hospital by transport as it is not enough even being added along with pain and suffering heads. Hence, taking into consideration the aforesaid aspect, this Court is inclined to award the compensation towards the aforesaid head. Hence, the award passed by the Tribunal is modified as details given below inclusive of other heads passed by the Tribunal.

SL. No.	Particulars	Amount (in Rs.)
1	Permanent disability	72,000.00
2	Loss of earnings	15000.00
3	Pain and sufferings & Extra nourishment	20000.00
4	Damages to cloth	1,000.00
5	Attendant Charges	5,000.00
6	Transport and Medical expenses	10,000.00
Amount	Total	1,23,000.00

10. Thus, the compensation of Rs.1,23,000/- (Rupees One Lakh Twenty Three Thousand Only) is awarded to the appellant herein with interest @ 7.5% p.a. from the date of petition till the date of deposit excluding the condoned delay period of 798 days as per the order dated 28.06.2013 of this Court. The Insurance Company is directed to deposit the aforesaid award amount within

a period of four weeks from the date of receipt of copy of this order after deducting the deposited amount if any.

11. On such deposit, the appellant is permitted to withdraw the modified award amount as awarded by this Court.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.4898 of 2003 dated 09.07.2008. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lbm

To

1. The Motor Accident Claims Tribunal
VI Judge, Small Causes Court,
Chennai.

Copy To

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

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.13387

+1cc to M/s.Anand and Suryas, Advocate, S.R.No.13232

C.M.A.No.2272 of 2013

GMR(CO)
CS/01/02/2021

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