

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2631 of 2012

G.Balaraman

.. Appellant/Petitioner

Vs.

1.S.Sivakumar

2.M/s IFFCO General Insurance Co.Ltd.,
Rep.by its Branch Manager,
Tulsi Chambers,
3rd Floor, 195, T.V.Swamy Road (West),
R.S.Puram,
Coimbatore.

.. Respondents/Respondent

(The 1st respondent ex-parte in lower Court,
hence, notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2011 made in M.C.O.P.No.521 of 2007 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem.

For Appellant : Mr.M.Guruprasad

For Respondents: Mr.E.Rajadurai for
Mr.M.B.Gopalan for R2
R1 - Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 05.08.2011 made in M.C.O.P.No.521 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem.

2.The appellant is the claimant in M.C.O.P.No.521 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Salem. He filed the 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 26.06.2007.

3.The case of the appellant is that on 26.06.2007 at about 11.00AM, the appellant was walking on the side of the Pallipalayam to Thiruchengode main road, near Anna Nagar Bus Stop from west to east. At that time, the rider of a Hero Honda Motorcycle bearing registration No.TN30W6728, which was coming behind the appellant from the same direction in a rash and negligent manner, hit behind the appellant. Due to the above said accident, the appellant sustained comminuted fracture on both bones of right leg and injuries all over the body. Immediately after the accident, the appellant was taken to National Hospital, Erode.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and insured with the second respondent and directed the respondents to pay the compensation jointly and severally to the claimants. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellant would submit that the driver of the motorcycle is responsible for the accident and the first respondent as the owner and the second respondent as the insurance company are jointly and severally liable to pay the compensation. As rightly held by the Tribunal, the learned counsel further contended that the Court below has awarded only a meager amount as a compensation and hence, prayed for enhancement of the compensation amount.

6.Per contra, the learned counsel for the second respondent denied the allegations contained in the claim petition, except those that are specifically admitted. The amount of compensation claimed by the appellant is highly excessive and hence, prayed for dismissal of the appeal.

7.Heard Mr.M.Guruprasad, learned counsel for the appellant and Mr.E.Rajadurai, learned counsel appearing for the second respondent and perused the materials available on record.

8.A perusal of the records shows that the claimant has sustained comminuted fracture on both bones of right leg and injuries all over the body and got heavy shock and mental agony and suffering heavy pain out of the wounds. Dr.Sambathkumar (PW2) has assessed the partial permanent disability as 38%. The Tribunal has reduced the same to 32%, and awarded a sum of Rs.48,000/- (Rs.1,500/- per percentage). Considering the age and nature of injuries sustained by him, this Court is inclined to take the permanent disability as 38% and enhance Rs.1500/- per percentage to Rs.2,000/- and award a sum of Rs.76,000/-

(Rs.2,000/- per percentage). It is seen from the claim petition that the claimant was working as a textile goods quality controller and was earning not less than Rs.6,000/- per month. The claimant has not let in any evidence to prove the same and hence, the Tribunal has fixed his salary as Rs.4,000/- per month and awarded a sum of Rs.8,000/- for two months as "loss of income". Considering the treatment period, this Court is of the opinion that he could not able to do his work for a period of five months. Hence, this Court is inclined to enhance the same to Rs.20,000/- (Rs.4,000 x 5). The Tribunal has awarded a sum of Rs.10,000/- towards "pain and Sufferings", which is very meager and the same is hereby enhanced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.3,000/- towards "Transportation" the same is hereby enhanced to Rs.5,000/-. The Tribunal has not awarded any amount towards "attender charges", "loss of future earning capacity" and "damages to clothes and articles". This Court awards a sum of Rs.5,000/-, Rs.20,000/- and Rs.300/- respectively for the same. The Tribunal has awarded a sum of Rs.21,200/- towards "medical expenses" and the same is hereby confirmed. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed. The award passed by this Court under various heads is extracted hereunder:

S.No .	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	48,000/-	76,000/-	enhanced
2.	Loss of income	8,000/-	20,000/-	enchanced
3.	Pain and sufferings	10,000/-	20,000/-	enhanced
4.	Transportation	3,000/-	5,000/-	enhanced
5.	Nutrition	5,000/-	5,000/-	confirmed
6.	Medical Expenses	21,200/-	21,200/-	confirmed
7.	Attender Charges	-----	5,000/-	awarded
8.	Damages to clothes and articles	-----	300/-	awarded
9.	Future loss of earning capacity	-----	20,000/-	awarded
	Total	Rs.95,200/-	Rs.1,72,500 /-	enhanced by Rs.77,300/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.95,200/- is hereby enhanced to Rs.1,72,500/- which is rounded off to Rs.1,73,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are jointly and severally 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn, if any. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Salem.

Copy to:

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

+1cc to Mr.M.Guruprasad, Advocate SR.8759

+1cc to Mr.M.B.Gopalan, Advocate SR.9152

C.M.A.No.2631 of 2012

BS (CO)

CB(16/03/2021)

WEB COPY