

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3807 of 2011

Venkatakondaiah (a) Pandiyan

... Appellant/Petitioner

vs.

1.K.Ranganathan
(R1 already set exparte in lower court)
(R1-Notice may be dispense with)

2.The Chairman and Managing Director,
United India Insurance Co. Ltd.,
No.24, Whites Road,
Chennai - 14. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 17.10.2006 in M.C.O.P.No.5132 of 2001 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.Y.Jayanthi Bhaskar
for Mr.J.Mahalingam

For Respondents : Mr.D.Baskaran for R2
Exparte - R1

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.5132 of 2001 on the file of the IV Judge, Court of Small Causes, Chennai. He filed the above claim petition under Sections 163 (A), 166, 140 and 142 of the Motor Vehicles Act, 1988, and Rule 3 of the MACT Rules seeking compensation of Rs.5,00,000/- restricted to Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 04.04.2000.

2. On 04.04.2000, at about 03.30 pm, when the appellant / claimant was standing at Tambaram Sanatorium bus stand, a lorry bearing Registration No.TN 22 C 1899, driven by its driver in a rash and negligent manner and hit the appellant / claimant, as a result of which, he sustained

grievous injuries. The contention of the appellant / claimant is that the accident took place due to the rash and negligent driving of the driver of the said lorry which belongs to the first respondent. The first respondent is the owner of the lorry and the second respondent is the Insurer of the said lorry. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him against both the respondents.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 and PW2 were examined and Exs.P1 to P5 were marked. On the side of the respondents, no documentary or oral evidence was marked.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.66,000/- together with interest at the rate of 7.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal.

5. The learned counsel appearing for the appellant / claimant submitted that the appellant / claimant sustained grade I fracture shaft of femur right, nail removed, shortening of right leg, tenderness over middle 1/3rd right thigh, multiple abrasion over right elbow and other serious multiple injuries all over the body and hence the compensation awarded by the Tribunal at Rs.66,000/- is very meagre. He further submitted that the appellant / claimant was working as a staff in Taj Group of Hotels, Chennai, earning a sum of Rs.2,500/- per month. Due to the accident, his future earning is completely restricted and therefore the Tribunal ought to have adopted multiplier method for awarding compensation under the head permanent disability. He also prayed for enhancing the compensation under other heads.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and second respondent and perused the materials available on record.

8. From the claim petition, it is seen that the appellant / claimant was a catering staff in Taj Group of Hotels, Chennai, aged 23 years, earning a sum of Rs.2,500/- per month. The Tribunal awarded Rs.5,000/- towards loss of

earning in total. However, taking note of the injuries sustained by the appellant / claimant, this Court is of the view that Rs.7,500/- (Rs.2,500/- x 3 months) can be awarded towards loss of earning. The Tribunal awarded a sum of Rs.40,000/- towards partial permanent disability. Dr.Saichandran (PW2) has deposed before the Tribunal that the appellant / claimant had suffered 45% partial permanent disability. The accident is of the year 2000 and therefore, Rs.1,000/- per percentage of disability can be awarded and hence, a sum of Rs.45,000/- is awarded towards partial permanent disability. From the materials available on record, it is seen that he was admitted as inpatient in Government General Hospital, Chennai from 04.04.2000 to 08.05.2000 and he has undergone an operation and implants were also fixed. Once again, the appellant was admitted as inpatient before the same Hospital for 28 days. Considering all these facts Rs.1,500/-, Rs.1,500/- and Rs.8,000/- awarded towards transportation, extra nourishment and pain and sufferings are hereby enhanced to Rs.5,000/-, Rs.5,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attender's charges and hence Rs.2,500/- is awarded towards the same. All the other heads awarded by the Tribunal are reasonable and they 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)
1	Loss of earning	5,000	7,500
2	Transportation	1,500	5,000
3	Extra nourishment	1,500	5,000
4	Mental shock and loss of amenities	10,000	10,000
5	Pain and sufferings	8,000	10,000
6	Attender's charges	Nil	2,500
7	Partial permanent disability	40,000	45,000
	Total	Rs.66,000/-	Rs.85,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.66,000/- is hereby enhanced to Rs.85,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit excluding the period of 1525 days as ordered by this Court in MP.No.1 of 2011 in CMA.SR.No.55618 of 2011 for condoning the delay. The second 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, to the credit of MCOP.No.5132 of 2001 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai 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 modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Judge, Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

Copy to:

The Section Officer,
VR Section,
High Court of Madras,
Chennai.

+2cc to M/s.J.Mahalingam, Advocate SR.9830

+1cc to Mr.D.Bhaskaran, Advocate SR.9987

C.M.A.No.3807 of 2011

SPD(CO)
CB(29/12/2020)

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