

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3356 of 2012

Sakthi (minor)
rep by FNF.Natarajan
No.2/151 MMDA Ganga Nagar,
Mettupalayam, Maduravoil, Chennai-102.

... Appellant/
Petitioner

Vs.

1.K.S.Abdul Wahid

2. IFFCO Tokio Gen. Ins. Co. Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai-17.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.1071 of 2007 dated 22.04.2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (Fast Track Court No.II,) Poonamallee.

For Appellant : Ms.Ramiya
for Mr.J.Mahalingam.

For Respondents : R1 - Exparte.
R2 - Mr.N.Vijayaraghavan.

J U D G M E N T
सत्यमेव जयते

The appellant is the claimant filed this appeal for enhancement of compensation.

2. On 26.05.2005 at 12.30pm when the appellant was walking by the southern side of the Kodambakkam High Road from east to west, the motor cycle bearing Reg.No.TN02-U-4606 driven rashly and negligently by its rider in a manner endangering the public safety came from the same direction dashed against the appellant from back side and caused grievous injuries to him.

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3. The second respondent/insurance company denied that the accident and stated that the appellant suddenly crossed the road without noticing the motor cycle, thus the accident occurred due to the fault on the appellant. The injuries and the disability are being exaggerated for filing the claim petition.

4. In order to prove the case of the claimant, the father of the claimant was examined as PW1 and the Doctor as PW2 and marked Ex.P1 to Ex.P7. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that PW2 Doctor had clearly deposed that the claimant sustained fracture in both bones in the left leg below the knee level and become malunited, due to the stiffening of muscles the left ankle movements are restricted to 30degree. PW2 had also examined and assessed the disability to the tune of 50% seeks enhancement under the head of pain and sufferings. Further the learned counsel seeks to award compensation under the heads of attendant charges, loss of amenities and for loss of studies.

7. The learned counsel for the second respondent/insurance company submitted that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has rightly considered the case of the claimant and awarded fair compensation. With regard to the medical expenses and for permanent disability. This Court inclined to enhance the amount from Rs.25,000/- to Rs.30,000/- for pain and sufferings and from Rs.2,500/- to Rs.5,000/- under the heads of transportation and nutrition. The tribunal failed to consider and award compensation under the heads of attendant charges, loss of amenities, this Court inclined to award a sum of Rs.5,000/- each under these heads and Rs.2,500/- towards loss of studies.

9. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation on the heads of pain and sufferings, transportation and nutritions and the compensation under the heads of attendant charges, loss of amenities and loss of studies are as follows :-

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Sl.No.	Heads	Amount
1	Pain and sufferings	30,000
2	Transportation	5,000
3	Extra nourishment	5,000
4	Attendant charges	5,000
5	Loss of amenities	5,000
6	Loss of studies	2,500
7	Medical expenses	5,000
8	Permanent disability	50,000
	TOTAL	1,07,500

10. The compensation of Rs.85,000/- is enhanced to Rs.1,07,500/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh

To

The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
(Fast Track Court No.II,) Poonamallee.

Copy to:

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

+1cc to Mr.N.Vijayaraghavan, Advocate SR.1533
+1cc to Mr.J.Mahalingam, Advocate SR.428

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