

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2813 of 2013

G.Kannan ... Appellant/ Petitioner

Vs.

1. A. Vijayarangan

2. Reliance General Insurance Company Limited,
No.6, Haddows Road, 6th Floor,
Chennai - 6. ... Respondents/ Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 28.02.2013 made in M.C.O.P.No.3584 of 2010 on the file of the V Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.K.Moorthy

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 28.02.2013 made in M.C.O.P.No.3584 of 2010 on the file of the V Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The case of the appellant is that on 20.11.2009 at about 10.00 a.m., while the appellant was riding the Scooter bearing Registration No.TN-09-AT-5565 from North to South on the Velachery Main Road, the first respondent's Car bearing Registration No.TN-32-D-6863 driven by its driver in a rash and negligent manner dashed against the appellant on the back side. As a result, the appellant sustained grievous injuries and immediately he was admitted for treatment in Dr.Kamatchi Memorial Hospital, Chennai. At the time of accident, he was aged 33 years, and before the accident, he was a Tailor and was earning Rs.250/- per day. Due to the injuries sustained in the accident, he became permanently disabled. Hence, he filed a petition before the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai, claiming Rs.1,50,000/- as compensation under various heads.

3. Denying the allegations, the second respondent filed a counter affidavit before the Tribunal stating that the accident had occurred only due to the rash and negligent riding of the rider of the Scooter and there was no fault on the part of the first respondent's driver. Further, it has been stated that the driver of the first respondent had no valid Insurance Policy, R.C. Book, Driving Licence and Badge at the time of accident. Hence, they are not liable to pay any compensation to the appellant. Moreover, it has been stated that the alleged disability is not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, one Mrs.A.Maheswari was examined as PW1, the appellant was examined as PW2, one Dr.J.R.R. Thiagarajan was examined as PW3 and Exs.P1 to P16 were marked. On the side of the respondents, neither any witness was examined nor any document was marked.

5. The Motor Accident Claims Tribunal, V Small Causes Court, Chennai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.26,000/- as compensation as stated below :

S.No.	Description	Amount
1.	Pecuniary Loss (3000x12x17x3%)	18,360
2.	Loss of Income	2,000
3.	Pain and Suffering	5,000
	Total	25,360 rounded off to 26,000

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal has erred in fixing the compensation.

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

8. On perusal of the award dated 28.02.2013 passed by the Motor Accident Claims Tribunal, V Small Causes Court, Chennai, it is observed that the appellant examined one doctor, namely, J.R.R.Thiagarajan as PW2, he has deposed that due to the injuries sustained in the accident, the appellant's right knee movement was restricted to 80 degrees, thus he sustained 30% disability. In order to prove the same, the Disability certificate (Ex.P15) and X-ray film (Ex.P16) were also marked before the Tribunal. But in spite of the same, the Tribunal has reduced the disability at 3% and awarded very meager amount under the said head, and this Court is inclined to

modify the same as 30%. Further, it is observed that in order to prove the income, the appellant has marked his Salary certificate as Ex.P8. But the employer of the appellant was not examined before the Tribunal, therefore, the Tribunal has fixed his monthly income meagerly. Moreover, it is observed that as per the medical records, the appellant's age was found to be 33 at the time of accident, therefore, the Tribunal has applied the appropriate multiplier 17 and awarded Rs.18,360/- ($3000 \times 12 \times 17 \times 3\%$) for Pecuniary Loss.

9. It is also observed that after the accident occurred on 20.11.2009, the appellant was admitted in Dr.Kamatchi Memorial Hospital, Chennai and thereafter, he took treatment at 24 hours hospital, Saidapet on 23.11.2009 and 27.11.2009 and at Public Health Centre on 07.12.2009. As per his medical records, he had taken treatment only as outpatient for 3 to 4 days, therefore, the Tribunal has awarded meagerly for Loss of Income. The sum of Rs.5,000/- awarded under the head of Pain and Suffering is found to be inappropriate, hence this Court is inclined to modify the same as Rs.10,000/-. It is further observed that the appellant has not been awarded any amount for Attender, Transport and Extra Nourishment. During the period of treatment, definitely he would have spent some amount for Attender, Transport and Extra Nourishment. Considering the same, this Court is inclined to award Rs.3,000/- each for Transport and Attender, and Rs.2,500/- for Extra Nourishment.

10. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Pecuniary Loss	18,360 ($3000 \times 12 \times 17 \times 3\%$)	1,83,600 ($3000 \times 12 \times 17 \times 30\%$)	Enhanced
2.	Loss of Income	2,000	2,000	Confirmed
3.	Pain and Suffering	5,000	10,000	Enhanced
4.	Attender	-	3,000	Granted
5.	Transport	-	3,000	Granted
6.	Extra Nourishment	-	2,500	Granted
	Total	25,360 rounded off to 26,000	2,04,100	Enhanced by 1,78,100

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent is directed to deposit the said amount of Rs.1,78,100/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

raja
To

1. The V Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

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

+1cc to Mr.K.Moorthy , Advocate SR.No. 18381

+1cc to Mr.A.Shanmugaraj , Advocate SR.No. 18040

C.M.A.No.2813 of 2013

A.SK(25.02.2021)

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