

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2891 of 2013

S.Sivakumar

... Appellant

Vs

1.R.Samy Kannu

2.ICICI Lombard Gen. Ins., Co., ltd.,
Flat No.84185, 1st Floor, Arihant Plaza,
Wall Tax Road, Chennai - 03

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.4877 of 2011 on the file of Motor Accidents Claims Tribunal (XIX Additional Court) Vellore District dated 28.03.2013.

For Appellant : Mr. Varadha Kamaraj

For Respondents : Mrs.R.Sreevidhya for R2
R1-Exparte

J U D G M E N T

The appellant herein, who is the claimant has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.4877 of 2011 on the file of Motor Accidents Claims Tribunal (XIX Additional Judge) Chennai dated 28.03.2013.

2. The case of the appellant / claimant is that on 19.10.2011 at 15.15 hrs, when the appellant was riding a Bajaj Pulsar Motor cycle, bearing Regn.No.TN-09-BF-9527 at Koyambedu P.H.Road and AKR Road Junction proceeding from West to east, at that time, a lorry bearing Reg.No.KA-050-9789 proceeding in the same direction from west to east was driven in a rash and negligent manner and dashed against the appellant, due to which the appellant sustained multiple injuries all over the body. The appellant was immediately admitted at Sridevi Hospital,

Chennai. According to him, both the respondents, viz., driver of the lorry owned by the 1st respondent as well as the 2nd respondent, being insurer of the said lorry are responsible for the accident, hence he seeks compensation against them. The appellant was a head constable and earning a sum of Rs.23,000/- per month and the appellant submits that he is not able to do the work as he was performing before the accident.

3. Per contra, the 2nd respondent has denied all the averments stated by the appellant by way of counter before the tribunal. The 1st respondent, being owner of the lorry bearing Reg.No. KA 05 9789 is alleged to have caused the accident, but has not reported the alleged accident and has not submitted the vehicle documents namely, the registration certificate, fitness certificate, driving license of the driver at the time of alleged accident. Further, the accident was caused only due to the negligence act caused by the appellant and for the same, the 2nd respondent cannot be held liable to pay the compensation and on the other hand, the claim made by the appellant is also very exorbitant, hence seeks to dismiss the claim petition filed by the appellant.

4. The Tribunal after considering all the averments, counter averments, the materials available on record and on examining the witnesses, had awarded a sum of Rs.91,800/- to the appellant, which are as follows:- Being not satisfied with the said award, the appellant is before this Court.

Sl.No	Name of Heads	Amount awarded by Tribunal
1	For 25% disability	Rs.60,000/-
2	For Pain and sufferings	Rs.10,000/-
3	For Nutrition	Rs.2,000/-
4	For Transportation	Rs.2,000/-
5	Partial Loss of Earning	Rs.17,800/-
TOTAL		Rs.91,800/-

5. The learned counsel for the appellant submits that considering the grievous injuries sustained by the appellant and the period of treatment and the nature of injuries, the Tribunal ought to have awarded the amount prayed in the claim petition, whereas, went in wrong in awarding only a sum of Rs.17,800/- towards partial loss of earning.

6. The learned counsel for the appellant contended that the Tribunal awarded only a meager compensation towards various heads and had omitted to award compensation towards attender charges, hence seeks to enhance the compensation.

7. Though notice was ordered to the 1st respondent as early as on 22.08.2013, there is no representation for the 1st respondent, he was set exparte before the Tribunal.

8. The learned counsel for the 2nd respondent / Insurance Company reiterates the averments in the counter filed before the Tribunal and further submits that the compensation awarded to the appellant is a just compensation and pleaded to dismiss the appeal filed by the appellant.

9. Heard the learned counsel for the appellant and the 2nd respondent and perused the materials placed on record.

10. Before the Tribunal, the appellant was examined himself as P.W.1 and the Doctor was examined as P.W.2 and Exhibits P.1 to P.12 were marked and no documents were marked on the side of the respondents to substantiate their case.

11. The appellant had deposed before the Tribunal that due to the accident, he sustained fracture on right hand, injury on forehead and multiple injuries all over the body and the same corroborates with the evidence of P.W.2, viz., Doctor. The Tribunal by considering the said depositions and Ex.P.12, Disability certificate issued by the doctor, who had assessed 30% disability, had stated that the appellant had sustained only 25% disability, and thereby awarded Rs.60,000/- towards disability, which in the considered opinion of this Court needs interference because of the reason that the appellant sustained grievous injuries and that he cannot perform duty as he had done before the accident, the same is evident from Ex.P.8, leave certificate issued by the Inspector of Police, Traffic Investigation Police Station. Therefore, this Court is inclined to accept 30% disability assessed by the Doctor, P.W.2 and by awarding a sum of Rs.3,000/- per disability, [in view of the injuries and fracture sustained by the appellant], a sum of Rs.90,000/- is awarded towards the permanent disability [Rs.3,000 X30%] instead of 25% disability assessed by the Tribunal.

12. That apart, in view of the grievous injuries and fracture suffered by the appellant, the amount awarded under the head of Pain and sufferings, Nutrition Expenses, Transportation charges by the Tribunal are very meager, hence a sum of Rs.15,000/- is awarded towards pain and sufferings; Rs.5,000/- towards Nutrition expenses and Rs.5,000/- towards transportation

charges, instead of Rs.10,000; Rs.2,000/- and Rs.2,000/- respectively.

13. Moreover, the appellant was working as Head Constable at K-10 Koyambedu Police Station and he had substantiated the same by marking his salary certificate as Ex.P9 and on perusal of the injuries sustained by the appellant, it is crystal clear that the appellant would not have attended duty for one month, hence a sum of Rs.20,000/- is hereby awarded towards Loss of Earning during treatment period. Further, definitely, a person would have accompanied the appellant to carryout his day to day activities, however, the Tribunal has not awarded any amount towards Attenders Charges, hence a sum of Rs.5,000/- is hereby awarded towards Attenders Charges.

14. Though the appellant had marked Ex.P.7, medical bills, it is not known why the Tribunal has not taken into consideration and awarded any amount, however, this Court by taking note of the injuries suffered by the appellant, is inclined to award a sum of Rs.5,000/- towards medical expenses. At the time when the accident had occurred, damages would have caused to the appellant's personal belongings and Estate, hence a sum of Rs.5,000/- is hereby awarded under the said head. The amount awarded by the Tribunal is hereby modified by this Court as follows:-

Sl. No	Name of Heads	Amount awarded by Tribunal	Enhanced / confirmed / Granted	Amount awarded by this Court
1	For 25% disability	Rs.60,000/-	-	-
2	Permanent disability [30% X3,000/-]	-	Granted	Rs.90,000/-
3	Pain and Sufferings	Rs.10,000	Enhanced	Rs.15,000/-
4	Nutrition Expenses	Rs.2,000/-	Enhanced	Rs.5,000/-
5	Transportation Expenses	Rs.2,000/-	Enhanced	Rs.5,000/-
6	Partial Loss of Earning	Rs.17,800/-	-	-

7	Loss of earning during treatment period	-	Granted	Rs.20,000/-
8	Attendant charges	-	Enhanced	Rs.5,000/-
9	Damages to personal belongings and estates	-	Granted	Rs.5,000/-
10	Medical Bills	-	Granted	Rs.5,000
TOTAL		Rs.91,800/-		Rs.1,50,000/-

13. In total a sum of Rs.1,50,000/- is awarded to the appellant. The respondents, jointly or severally are directed to deposit the said amount within a period of six weeks from the date of receipt of copy of this order with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

With the above said observations and directions, the present Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accidents Claims Tribunal (XIX Additional Court)
Vellore District
2. The Section Officer,
VR Section, Madras High Court, Chennai

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.13023

C.M.A.No.2891 of 2013

KS (CO)
GMY (26/08/2020)