

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2936 of 2013

P. Karthik

... Appellant/ Petitioner

Vs.

1.M. Vinayagam
(R1 set exparte before the Trial Court,
Hence Notice may be dispensed with)

2.ICICI Lombard General Insurance Co., Ltd.,
Nungambakkam High Road,
Chennai -600 034. ...Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Judgment dated 31.08.2012 made in MACT.O.P.No.1742 of 2008 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal) at Chennai.

For Appellant : Mrs.Subadra for Mrs.M.Malar

For R1 : Ex-parte

For Respondent-2 : Mr. S. Poo malai

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the decree and Judgment dated 28.03.2008 made in M.C.O.P.No. 3810 of 2006 on the file of Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2.The appellant is the claimant. The first and second respondents are the owner and insurer of the alleged vehicle involved in the accident.

3.It is the case of the appellant on 24.02.2007 at about 4.00 p.m when the appellant was proceeding in a motor cycle

bearing Registration No.TN-20-J-3847 on Mannur Salai near Kannikoil, a auto rickshaw bearing Registration No.TN-20-AE-6499 was driven by its driver in a rash and negligent manner and knocked the two wheeler of the appellant. Due to the impact the appellant sustained grievous injuries. The driver of the auto is responsible for the accident. Hence, the appellant filed a claim petition before the Tribunal against the owner and insurer of the vehicle seeking Rs.20,00,000/- as compensation. The Tribunal after analyzing the materials available on record awarded Rs.9,84,375/- as compensation with 7.5% p.a from the date of petition till the date of deposit.

4. Not being satisfied with the award passed by the Tribunal the appellant has come up with this present appeal.

5. Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked twenty three documents, viz., Ex.P.1 to P.23. The respondents have neither let in any evidence nor marked any documents.

6. The learned counsel for the appellant submitted that the appellant took treatment as in-patient on seven occasions from 24.12.2007 to 15.04.2009 wherein he underwent several surgical procedures viz., ORIF with plate Osteosynthexs, posterolateral bone grafting, debridement and fasciocutaneous flap surgery, implant removal, proximal corticotomy, excision of soft tissue, bone grafting etc., Hence his health condition is very poor but, the Tribunal has not considered the same and fixed 25% as partial permanent disability, whereas the Doctor has assessed 60% as partial permanent disability and issued disability certificate/Ex.P.22 to that effect. Hence, he prays consider the above aspect and enhance the compensation accordingly.

7. The learned counsel for the second respondent/Insurance Company denied the averments in the claim petition. He would further contend that the driver of the vehicle does not possess valid driving licence at the time of accident. In any event the Tribunal has awarded huge amount as compensation.

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

9. With regard to negligence aspect, the learned Judge has raised the question, Whether the accident had happened due to the rash and negligent driving of the driver of the Load auto bearing Registration No.TN-20-AE-6499? and discussed the said aspect elaborately. The appellant was examined as P.W1 and he

deposed that the rash and negligent on the part of the driver of the auto is the cause for the accident. Ex.P.1/F.I.R tallies with the narration of the accident as found in the deposition of P.W.1. The driver of the auto was not examined. Based on the deposition of P.W.1 and Ex.P.1/F.I.R the Tribunal concluded that the driver of the auto is the cause for the accident. To controvert the same no new fact is forthcoming on the part of the respondent. Hence, this Court is of the view that the finding of the Tribunal with regard to negligent aspect is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

10. With regard to quantum the Tribunal, based on Ex.P.21/qualification certificates, which shows that the appellant is a student and due to the accident he was not able to continue his studies. Hence, the Tribunal has awarded Rs.1,00,000/- towards the head loss of Education. Based on Ex.P.19/Travel bills the Tribunal has awarded Rs.13,600/- towards Transport to Hospital. Considering Exs.P.2 to 19, discharge summaries, Treatment record, hospital bills & Medical bills the Tribunal has awarded Rs.10,000/-, Rs.5,11,275/-, Rs.25,000, Rs.50,000/- and Rs.45,000/- towards Extra Nourishment, Medical Expenses, Attender charges, Compensation for loss of amenities and pain and sufferings respectively. P.W.2/Dr.Saichandran examined the injured and assessed 60% as disability suffered by the appellant. Considering the nature of injuries the Tribunal has taken only 25% and fixed the monthly income of the injured as Rs.4,500/- per month and arrived Rs.54,000/- as annual income and considering the age of the injured applied the multiplier '17' and arrived Rs.2,29,500/- ($\text{Rs.54,000} \times 17 \times 25\%$) as loss of earning power. Thus, quantified Rs.9,84,375/- as total compensation.

11. Taking note of the fact that the appellant is a student and after finishing his Course, definitely he would have earned more than Rs.4,500/- (fixed by the Tribunal) hence, this Court is inclined to take Rs.6,000/- as monthly income of the injured and taking 25% as disability and considering the age of the injured the correct multiplier to be adopted is '18' and quantified Rs.3,24,000/- ($\text{Rs.6,000} \times 12 \times 18 \times 25\%$) towards the head loss of earning power. With regard to pain and sufferings the award amount is enhanced to Rs.50,000/- from Rs.45,000/- and for the head Transport expenses the Tribunal has awarded Rs.13,600/-, the same is rounded off to Rs.14,000/-. The amount awarded under other heads by the Tribunal remains unchanged. Thus, the amount awarded by this is Court is hereby tabulated:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Education	Rs.1,00,000/-	Rs.1,00,000/-
Transport	Rs.13,600/-	Rs.14,000/-
Extra Nourishment	Rs.10,000/-	Rs.10,000/-
Medical Expenses	Rs.5,11,275/-	Rs.5,11,275/-
Attender Charges	Rs.25,000/-	Rs.25,000/-
Compensation for loss of amenities	Rs.50,000/-	Rs.50,000/-
Pain and sufferings	Rs.45,000/-	Rs.50,000/-
Permanent Disability	Rs.2,29,500/-	Rs.3,24,000/-
Total	Rs.9,84,375/-	Rs.10,84,275/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount awarded by this Court along with interest at the rate of 7.5% per annum, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. It is needless for this Court to mention here that this Court while numbering the present appeal in C.M.A.Sr.No.54433 of 2013 on 12.08.2013 has made it clear that the appellant is not entitled for the interest for the delay period, viz 165 days. On such deposit being made, the appellant is permitted to withdraw the amount, less the amount, if any already withdrawn, by way of filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smn

To

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

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

+1cc to Mr.K.Poomalai , Advocate SR.No. 13876

+1cc to M/s.M.Malar , Advocate SR.No. 137381

C.M.A.No.2936 of 2013

A.SK(11/12/2020)