

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.2957 of 2013

Kumar

... Appellant/Petitioner

Vs.

1. C. Nilammal

2. The New India Assurance Company Ltd.,
No.46, Moore Street,
Chennai 600 001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the decree and Judgment dated 06.02.2007 made in M.C.O.P.No. 2923 of 2000 on the file of Motor Accident Claims Tribunal, (In the Court of II Fast Track Court) Chennai.

For Appellant : Mrs.Subadra for Mrs.M.Malar
For Respondent-1 : Ex-parte
For Respondent-2 : Mr.J. Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the decree and Judgment dated 06.02.2007 made in M.C.O.P.No.2923 of 2000 on the file of Motor Accident Claims Tribunal, in the Court of II Fast Track Court, Chennai.

2.The appellant is the claimant. The first and second respondents are the owner and insurer of the vehicle respectively.

3.It is the case of the appellant that on 22.03.2000 at 6.30 p.m when the appellant was travelling in an auto bearing Registration No.TN-07-H-7366 at peasant Avenue Road, the driver of the said auto drove the same in a rash and negligent manner and capsized. Due to the impact the appellant sustained grievous injuries. Therefore, he filed a claim petition before the Tribunal seeking Rs.2,00,000/- as compensation.

3.The Tribunal after analysing the oral and documentary evidence awarded Rs.71,000/- as compensation, with 7.5% interest p.a from the date of petition till the date of deposit.

4.Challenging 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 six documents viz., Ex.P1 to Ex.P6. On the side of the respondent, no documents and witness was marked and examined.

6.The learned counsel for the appellant submitted that due to the accident, the appellant sustained Fracture in left ribs, fracture in left humerus and multiple injuries all over the body. Hence, he lost his earning power to considerable extent, but, the Tribunal has not awarded any amount towards the head loss of earning. Hence, prays to enhance the award amount.

7.The learned counsel for the second respondent/Insurance Company denied the averments in the claim petition. He would further contend that there is no proof that regarding the avocation and income of the injured. In any event the Tribunal has awarded huge amount as compensation and prays to dismissal of this appeal.

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

9.With regard to negligence aspect the Court below has raised 2 points which are as follows:

1.Whether the accident had occurred due to the rash and negligent driving of the driver of the 1st respondent?

2.Whether the accident had taken place due to the rash and negligent act of the petitioner?

The Court below has discussed about the above aspects elaborately. P.W.1/appellant was examined and he deposed that the negligence on the part of the auto driver is the cause for the accident. The evidence of Ex.P.1/F.I.R was inconformity with the deposition of P.W.1. But, taking into consideration of the evidence of P.W.1, and going through Ex.P.3/Rough sketch and Ex.P.4/Charge sheet the Tribunal arrived at a conclusion that the driver of the auto is the tortfeasor for the accident. To controvert the same no new fact is forthcoming on the part of the respondents. 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, considering the nature of injuries sustained by the appellant Rs.10,000/- was awarded towards pain and sufferings and Rs.20,000/- was awarded towards his loss of amenities. Considering Ex.P.5/Disability Certificate issued by P.W.2/Dr.Saichandran the Tribunal had taken 40% as partial and permanent disability suffered by the appellant and determined Rs.1,000/- per percentage and quantified Rs.40,000/- (Rs.1,000/- x 40%) towards the head partial and permanent disability. Apart from this the Tribunal has awarded Rs.1,000/- towards Transport and Extra nourishment. Thus, quantified Rs.71,000/- as total compensation.

11. From the perusal of the order it is seen that the Tribunal has awarded Rs.1,000/- towards Transport and Extra Nourishment, which in the considered opinion of this Court is very meager, hence, the same is modified as Rs.4,000/- towards Transport and Rs.5,000/- towards Extra Nourishment. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, taking into consideration of the evidence of P.W.2/Doctor who had deposed that the appellant had suffered fracture in his left upper of humerus bone and fracture in his left 2nd, 3rd, 4th and 5th ribs, therefore this Court feels that he would have undergone severe pain & sufferings, therefore, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards the head attender charges, Medical Bills and Damage to clothes. However, this Court taking note of the nature of injuries undergone by the appellant, is of the view that definitely a person would have assisted him to carry out his day to day activities. Therefore, a sum of Rs.2,000/-Rs.3,000/- and Rs.1,000/- is awarded towards the same respectively. That apart, the amount awarded under loss of amenities and permanent disability remain unchanged. Thus, the amount awarded by this Court is hereby tabulated:

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Pain and sufferings	Rs.10,000/-	Rs.15,000/-
Loss of amenities	Rs.20,000/-	Rs.20,000/-
Transport and extra nourishment	Rs.1,000/-	Rs.4,000/- Rs.5,000/-
Partial and permanent disability	Rs.40,000/-	Rs.40,000/-
Attender Charges	-Nil-	Rs.2,000/-
Medical Bills	-Nil-	Rs.3,000/-

Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
Damage to clothes	-Nil-	Rs.1,000/-
Total	Rs.71,000/-	Rs.90,000/-

12. With the above said modification, 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 from the date of petition till the date of realisation, 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 admitting the present appeal in M.P.No.1 of 2013 in CMA Sr.No.108727 of 2012 on 19.08.2013 has made it clear that the appellant is not entitled for the interest for the delay period of 2051 days. On such deposit being made, the appellant is permitted to withdraw the amount, as per the ratio of apportionment made by the Claims Tribunal, less the amount, if any, already withdrawn, by way of filing an appropriate application before the Court concerned. No Costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

smn
To

The Motor Accident Claims Tribunal,
In the Court of II Fast Track Court, Chennai.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.M. Malar, Advocate sr 13736.
+1 CC to Mr.J. Chandran, Advocate sr 13838.

C.M.A.No.2957 of 2013

LN(CO)
SP(16/12/2020)