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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3631 of 2019

M.Jagadeesh

.. Appellant/Claimant

Vs.

1. S.Krishnaveni

2. The New India Assurance Co. Ltd.,
(Motor Third Party Cell),
No.45, Moore Street, 5th Floor,
Chennai - 600 001.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 04.08.2018, made in M.C.O.P.No.1524 of 2015, on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent 1 : No appearance

For Respondent 2 : Mrs.S.R.Sumathy

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J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant, is before this Court with this appeal seeking enhancement of compensation.

2. The case of the appellant/claimant, in brief is as follows:

(i) On 15.10.2014 at about 01.00 p.m. while the appellant/claimant was riding his motorcycle from west to east direction at the left side of K.H.Road, near D.No.387, Deleshia Tea Stall, Otteri, Chennai, a lorry bearing registration No.TN-37-6006, driven by the first respondent, which was insured with the second respondent/insurance company, came in a rash and negligent manner and hit the appellant/claimant motorcycle from



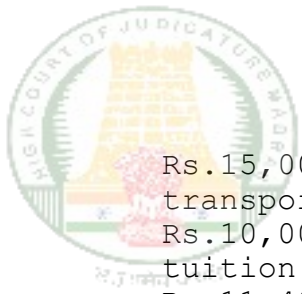
behind, in which, he suffered grievous injuries and he took treatment at Kilpauk Government College Hospital, and undergone surgeries for the fractures suffered in both the legs.

(ii) According to the appellant/claimant, at the time of the accident, he was 19 years old and he was studying first year B.A degree course at D.G.Vaishnav College. He was a table tennis player and participated in various District level tournaments and also got certificate of merit. Due to the injuries sustained in the accident, he could not pursue his table tennis career as he suffered 60% disability. That apart, he was also not able to walk or stand. Hence, claiming a sum of Rs.15,00,000/- as compensation, the appellant/claimant has filed the claim petition before the Tribunal.

3. The first respondent / owner of the offending vehicle remained ex parte. The second respondent / insurance company contested the claim petition on the ground that the accident had taken place due to the rash and negligent driving of the appellant/claimant. So far as the disability is concerned, even though he suffered some disability, there is no evidence to show that he sustained permanent disability. That apart, there is also violation of policy condition by the owner of the lorry and hence the second respondent / insurance company is not liable to pay compensation.

4. Before the Tribunal, in order to prove the case, the appellant/claimant examined himself as P.W.1 and a doctor was examined as P.W.2 and marked as many as thirteen documents as Exs.P1 to P13. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record, came to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent vehicle and as the vehicle was insured, the second respondent / insurance company is liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal has held that P.W.2 doctor assessed the disability at 60%, which was not issued as per Rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. The disability was not assessed as per the guidelines issued by the Government of India and hence the disability certificate, which is marked as Ex.P13 cannot be considered as a conclusive proof regarding percentage of disability suffered by the claimant. The Tribunal considering the materials available on record has held that the claimant suffered 40% partial permanent disability and awarded a sum of Rs.1,20,000/- towards disability. The tribunal has awarded a sum of Rs.40,000/- towards pain and suffering;



Rs.15,000/- towards extra nourishment; Rs.10,000/- towards transport expenses; Rs.1,000/- towards damage to clothes; Rs.10,000/- towards medical expenses; Rs.15,000/- towards tuition fees; Rs.10,000/- towards loss of amenities and Rs.11,400/- towards attender charges. Thus, the Tribunal arrived at a total compensation of Rs.2,32,400/-. Not feeling satisfied with the said compensation awarded by the Tribunal, the appellant/claimant seeking enhancement of compensation has filed the present appeal before this Court.

6. Mr.K.Varadhakamaraj, learned counsel appearing for the appellant/claimant would submit that at the time of the accident, the appellant/claimant was 19 years old and was studying first year degree course. He was a sports person and participated in district level table tennis tournament competition and received merit certificates, which was marked as Exs.P4 to P7. Due to the accident, the appellant/claimant suffered permanent disability and therefore he cannot pursue his sports career and ultimately lost huge monetary benefits. That apart, he has undergone pain and sufferings and major injuries, which was not properly considered by the Tribunal and awarded only a meager sum of Rs.2,32,400/- as compensation.

7. Per contra, Mrs.S.R.Sumathy, learned counsel appearing for the second respondent / insurance company would contend that the appellant/claimant was a student at the time of the accident and he has only participated in the college level table tennis tournaments. However, absolutely there is no evidence to show that due to the injuries suffered by him, he was not able to pursue his sports career. That apart, the disability certificate issued by the doctor shows that he suffered fracture in the legs and hence the Tribunal rightly fixed the disability at 40% and awarded a sum of Rs.1,20,000/- and in respect of pecuniary and non pecuniary loss heads, the Tribunal has awarded compensation very liberally and there is no reason to interfere with the same.

8. I have considered the rival submissions.

9. Admittedly, the appellant/claimant was not referred to the Medical Board to assess his disability. However, P.W.2, doctor gave certificate assessing his disability at 65% as partial permanent disability. The Tribunal after considering the materials available on record was not inclined to accept the disability certificate, however fixed the disability at 40% partial permanent disability. I have gone through the materials available on record. Exs.P2 and P3 discharge summary issued by the Ortho Department of Rajiv Gandhi Government General Hospital and Department of Department of Plastic Facio Maxillary and Reconstructive Surgery respectively, which shows that the

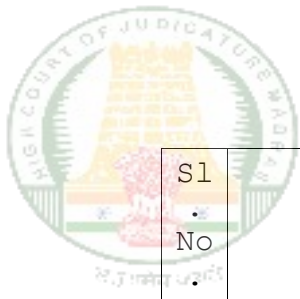


claimant suffered fracture in leg and surgery was conducted for the same. There is no evidence to show that due to the fracture suffered by him there is any shortening of leg or he has difficulty in walking or running. In the above circumstances, the Tribunal has rightly fixed the disability at 40% partial permanent disability and awarded a sum of Rs.1,20,000/- towards the same. I find no illegality in the same.

10. Further, from a perusal of the materials available on record, it could be seen that the appellant/claimant was admitted in the hospital and taken treatment as inpatient for more than 25 days and thereafter he had undergone minor procedures. Hence, towards pain and sufferings, I am inclined to grant a sum of Rs.1,00,000/- instead of Rs.40,000/- awarded by the Tribunal. Further a sum of Rs.25,000/- is awarded towards extra nourishment instead of Rs.15,000/- awarded by the Tribunal and a sum of Rs.25,000/- is awarded towards medical expenses instead of Rs.10,000/- awarded by the Tribunal. In respect of loss of amenities, the appellant/claimant was a table tennis player and he has participated in college level and district level tournaments and obtained merit certificates and it was also marked before the Tribunal. It is now stated that due to the injuries suffered in the accident, he is not able to play table tennis as effectively as before. In such circumstances, this Court is of the view that as claimant lost his sports career, a sum of Rs.2,00,000/- is awarded towards loss of amenities instead of Rs.10,000/- awarded by the Tribunal. In respect of other heads are concerned, the Tribunal has rightly granted compensation and there is no need to interfere with the same.

11. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Disability	1,20,000	1,20,000	Confirmed
2.	Pain and sufferings	40,000	1,00,000	Enhanced
3.	Extra nourishment	15,000	25,000	Enhanced
4.	Transport to hospital	10,000	10,000	Confirmed
5.	Damages to clothes	1,000	1,000	Confirmed
6.	Medical expenses	10,000	25,000	Enhanced



Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
7.	Tuition fees during treatment	15,000	15,000	Confirmed
8.	Loss of amenities	10,000	2,00,000	Enhanced
9.	Attender charges	11,400	11,400	Confirmed
	Total	2,32,400	5,07,400 (Rounded to Rs.5,10,000/- -	Enhanced by Rs.2,77,600/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.2,32,400/- awarded by the Tribunal is hereby enhanced to Rs.5,10,000/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. The second respondent / insurance company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1524 of 2015, on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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



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

C.M.A.No.3631 of 2019

LN(CO)
CB(13/09/2021)