

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3070 of 2013

Mr. A. John Paul
S/o. Mr. M. Arockiayaswamy

..Appellant/Petitioner

Versus

1.Mr. T. Rajadurai

2. The Divisional Manager,
The Oriental Insurance Co. Ltd.
No.115, Broadway, Chennai - 108.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 09.12.2003 made in M.C.O.P.No.579 of 2000 on the file of the Motor Accident Claims Tribunal, (Additional District Judge, Fast Track Court No.1) at Chengalpet.

For Appellant : Mr.V.Ramesh

For Respondent-2 : Mr.P. Kandaswamy

Respondent-1- Ex-parte

J U D G M E N T

This appeal has been preferred by the appellant herein against the Judgment and decree in M.C.O.P.No.579 of 2000 dated 09.12.2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court-1, Chengalpat, seeking for enhancement of compensation awarded by the Tribunal.

2. The petitioner before the Claims Tribunal is the appellant herein. The 1st respondent herein is the owner of the vehicle and the 2nd respondent herein is the Insurance Company in which the offending vehicle was insured at the time of the accident. For the sake of convenience, the parties have been referred to in the same ranking as before the Tribunal.

3. The facts of the case briefly are as follows:

On 24.06.2000 at about 3.00pm, when the petitioner/appellant herein, who was a Polytechnic Student at that time of the accident, was walking on the mud portion of the G.S.T. Road from S.R.M. College, Potheri, a Lorry bearing Registration No.TDH 6741 belonging to the 1st respondent driven by the driver of the Lorry in the rash and negligent manner, without observing traffic rules and regulation, hit the pedestrian-petitioner/appellant herein and caused the accident. In the result, the petitioner/appellant herein sustained multiple grievous injuries all over the body and he was admitted at the Hindu Mission Hospital for treatment. Thereafter, he was admitted at Ramachandra Hospital, Porur, for further treatment. In view of the injuries sustained in the accident and treatment taken by the petitioner to that effect, the petitioner has filed a Claim petition in M.C.O.P. No.579 of 2000 on the file of the Motor Vehicle Claims Tribunal, Additional District Judge, Fast Track Court-1, Chengalpattu, seeking for compensation of Rs.5,00,000/- in favour of the petitioner/appellant herein. After trial, the Tribunal has awarded a sum of Rs.1,01,686/- to the petitioner/appellant herein as compensation. Being aggrieved by the aforesaid award, the petitioner/appellant herein has filed the present appeal seeking for enhancement of compensation as prayed for.

4. The learned counsel for the appellant would submit that the Tribunal has awarded a meagre sum of Rs. 1,01,686/- as compensation without considering the injuries sustained by the petitioner/appellant herein in the younger age. At the time of the accident, the petitioner was studying in the Valliammal Polytechnic, Potheri as a 3rd year student. In view of the pain and sufferings arose from the injuries and fracture sustained in the accident, the petitioner had not concentrated on his studies and lost one year in studying the 3rd year subject in the Polytechnic College. Even though, it was confirmed by the Tribunal that the cause of the accident is pertaining to the rash and negligent driving on the part of the driver of the offending vehicle, the Tribunal had awarded a lesser compensation to the petitioner/appellant herein. After taking into consideration, the petitioner has sustained multiple grievous injuries and fracture in the accident in the younger age while he was studying in the Polytechnic College and lost

one year course in the Polytechnic college thereby the life of the petitioner has changed from the normal course, this Court may be pleased to enhance the compensation amount awarded to the petitioner/appellant herein.

5. On the other hand, the learned counsel appearing for the Insurance company/2nd respondent would submit that the petitioner/appellant herein was awarded the compensation after considering the entire oral and documentary evidence placed before the Claims Tribunal. The petitioner/appellant herein was not having any income at the time of the accident and was studying in the Polytechnic college. Hence, the Tribunal has rightly awarded the compensation to the petitioner/appellant herein after taking into consideration the evidence of P.W.1 and P.W.2 and all other exhibits marked on the side of the petitioner/appellant herein. As there is no infirmity in the award passed by the Tribunal, this appeal filed by the petitioner/appellant herein is not sustainable and liable to be set aside.

6. Heard the learned counsel appearing for both sides and perused the materials available on records. The 1st respondent who is the owner of the offending vehicle, was set ex-parte before the Tribunal as well as before this Court as he was remained absent.

7. During the course of the trial, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.15 were marked on the side of the petitioner/appellant herein. On the side of the Insurance company, neither evidence was examined nor document was marked in support of their side.

8. It is admitted fact that the factum and the manner of the accident being rash and negligence driving on the part of the driver of the Lorry under Section 163-A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

9. On a perusal of the entire award, it is seen from the Ex.P.2, Accident Register, Ex.P.3, Wound Certificate and Ex.P.6, Discharge Summary that the petitioner has sustained multiple injuries and fracture all over body ie. Fracture in skull, Cut injuries on the right ear, Fracture in left shoulder, Fracture medical Melladous on the right side, Fracture in right leg and internal and external injuries all over the body. Further, P.W.2, Dr. Dharmaraj, was examined during the Trial, wherein it was stated that the movement of the left shoulder and neck seems to be reduced and therefore, he assessed the permanent disability at 40% after considering all over fracture and injuries sustained by the petitioner/appellant herein. However,

the Tribunal has awarded the compensation towards permanent disability a sum of Rs.35,000/- and pain and sufferings for a sum of Rs.10,000/- only. Hence, this Court is of the considered view that the permanent disability fixed by the P.W.2/Dr. Dharmaraj, would be taken as it is. Thus, the compensation towards permanent disability shall be fixed as Rs.40,000/- after taking 40% permanent disability for Rs.1000/- per percentage. Taking into consideration the injuries and fractures sustained by the petitioner/appellant herein, under the head of pain and sufferings, the petitioner/appellant herein is awarded a sum of Rs.15,000/- instead of Rs.10,000/-. Since the medical expenses was awarded as per the Ex.P8 and Ex.P9- medical bills, this Court has confirmed the same. However, during the course of treatment, the petitioner would have taken care by attender, and taken extra nourishment for speedy recovery and carried by Transport for treatment. Further, the petitioner has lost one year studies in the college due to the accident. Hence, this Court has awarded the compensation as details given below:

SL No	Particulars	Amount Awarded by Tribunal (in Rs.)	Amount (in Rs.)
1	Permanent Disability @40%	35,000.00	40,000.00
2	Pain and sufferings	10,000.00	15,000.00
3	Medical Expenses	56,686.00	56,686.00
4	Extra-nourishment	---	3,000.00
5	Attendant Charges	---	5,000.00
6	Transport Expenses	---	5,000.00
7	Loss of one year college studies	---	5,000.00
Total Amount		1,01,686.00	1,29,686.00

10. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.28,000/- from Rs.1,01,686/- to Rs.1,29,686/- with interest @ 9% per annum from the date of petition till the date of deposit. The Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.579 of 2000 after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the same along with the interest after filing a formal petition before the concerned Tribunal.

11. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Lbm

To

1.Motor Accident Claims Tribunal
(Additional District Judge, Fast Track Court No.1) at
Chengalpet.

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

+1 cc to Mr.Thiagarajan,Advocate Sr.No. 12763

+1 cc to Mr.Kamdasamy, Advocate Sr.No. 12245

C.M.A.No.3070 of 2013

MG(CO)
RMP(23/04/2021)