

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.3148 of 2013

S.Prakash

...Appellant/Claimant

Vs.

1. T.N.Rathinam
(was set ex-parte in the trial Court)

2. ICICI Lombard General Insurance Co. Ltd.,
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai-600 006.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2013 made in M.C.O.P.No.456 of 2009 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.K.Suriya Narayanan for Mr.M.Swamikkannu
For Respondents: : R-1 Set ex-parte before the Tribunal
Mrs.R.Sreevidhya for R-2

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

Not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal is filed by the claimant, as against the award dated 17.06.2013 made in M.C.O.P.No.456 of 2009 on the file of the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai.

2. It is the case of the appellant/claimant that on 18.02.2008 at about 6.30 hours, while the claimant was riding his moped bearing Registration No.TN-45-E-0995 proceeding from North to South, opposite to Adaikkalam Kathar Temple in K.Pudupatti to Arimalam Road, a lorry bearing Registration No.TN-28-1904, owned by the first respondent and insured with the second respondent-Insurance Company, was driven by its driver in a rash and negligent manner from South to North, hit

against the claimant's vehicle, and thus caused the accident, in which the appellant/claimant sustained severe injuries. Hence, the claimant made claim before the Tribunal as against the owner of the offending vehicle as well as its insurer, claiming a sum of Rs.56 lakhs as compensation.

3. In order to prove the claim, the appellant/claimant examined himself as P.W.1, besides examining P.W.2 Doctor and Exs.P-1 to P-17 were marked. On the side of the respondents, no oral and documentary evidence had been adduced. The Tribunal, after analysing the evidence adduced before it, had awarded a sum of Rs.2,64,507/- as against the claim of Rs.56 lakhs. Aggrieved by the same, the present appeal has been filed by the claimant.

4. The learned counsel for the appellant/claimant submitted that on account of the accident, the claimant had sustained severe head injury and Ex.P-3 discharge summary shows the nature of injury sustained by the claimant, who was 20 years at the time of accident and studying III Year Diploma in Electrical and Electronics Engineering in Venkateswara Polytechnic, Kaikuruchi, Pudukkottai District. The Doctor who was examined a P.W.2, had assessed the disability of the claimant, but the Tribunal fixed the disability at 40%, as the disability fixed by the Doctor appeared to be on the higher side. The Tribunal had awarded only Rs.80,000/- towards permanent disability, which according to the learned counsel for the appellant is meagre amount.

5. It is further submitted by the learned counsel for the appellant that the Neurologist who had examined the appellant, had opined in Ex.P-4 O.P. Chit that on account of the injuries sustained by the appellant/claimant, his movement in the limbs got affected to some extent. Under such circumstances, the Tribunal ought to have adopted multiplier method in arriving at the compensation under the head 'permanent disability'. Instead of doing so, the Tribunal had awarded a sum of Rs.2,000/- per percentage of disability and hence, the amount awarded under that head may be enhanced by adopting multiplier method. Furthermore, the amounts awarded by the Tribunal under the other heads, appear to be low and the same may also be enhanced.

6. The learned counsel appearing for the second respondent-Insurance Company opposed for enhancement of the amount of compensation by stating that the amounts awarded by the Tribunal under the various heads, appear to be reasonable and thus, he sought for dismissal of the appeal.

7. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record..

8. We find that on account of the accident, the appellant/claimant had sustained severe head injury "on the right fronto parietal EDH with early mass effect and right upper brachial plexus injury". We find that there was absolutely no fracture sustained by him. Therefore, the question of awarding the amount under the head 'permanent disability' by applying multiplier method, does not arise. Hence, we are not inclined to consider the submission of the learned counsel for the appellant on this aspect of the matter.

9. Considering the factual aspects, it is clear that the appellant would find it difficult in continuing his normal avocation as he was carrying on before the accident. Hence, the sum of Rs.50,000/- awarded by the Tribunal under the head "loss of amenities" needs proper enhancement. Therefore, a sum of Rs.50,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.1,50,000/- by adding another sum of Rs.1,00,000/- , taking into account the nature of injury sustained by the claimant.

10. Similarly, the amount awarded by the Tribunal under the head 'pain and suffering' at Rs.25,000/- appears to be low and the same is enhanced to Rs.50,000/- by adding another sum of Rs.25,000/-, taking into consideration the suffering undergone by the appellant/claimant due to the accident.

11. Further, as the appellant/claimant would incur future medical expenses for the injury sustained by the claimant, this Court deems it fit and proper to award Rs.25,000/- towards future medical expenses. Accordingly, a sum of Rs.25,000/- is awarded.

12. The amounts awarded by the Tribunal under the other heads are hereby confirmed, as the same appears to be just, fair and reasonable.

13. To sum up, the amounts awarded by this Court are tabulated below:

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
1	Transport to hospital	25,000	25,000
2	Extra-nourishment	10,000	10,000
3	Medical expenses	73,507	73,507
4	Damage to clothing	1,000	1,000
5	Pain and suffering	25,000	50,000

Sl. No.	Head under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
6	Loss of amenities in life	50,000	1,50,000
7	Permanent disability	80,000	80,000
8	Future medical expenses	---	25,000
	Total	2,64,507	4,14,507 (rounded off to Rs.4,14,510/-)

14. Thus, the appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal from Rs.2,64,507/- to Rs.4,14,510/- (Rupees four lakhs fourteen thousand five hundred and ten only) with interest at 7.5% per annum from the date of claim petition till the date of payment. Since the amount of compensation is enhanced, the claimant is directed to pay the necessary Court fee for the enhanced compensation. The second respondent/Insurance Company shall deposit the entire compensation amount before the Tribunal (less the amount already deposited), within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant shall withdraw the entire compensation amount in accordance with law before the Tribunal. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

Copy to

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

C.M.A.No.3148 of 2013

SV(CO)
SP(26/04/2021)