

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3367 of 2013

Vinayaga Murthy

...Appellant/Petitioner

1.R. Anand
2. The New India Insurance Company Ltd.,
92, G.N. Cheetty Road, Messaine Floor,
E.C. Chambers, T.Nagar,
Chennai - 600 017. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 30.12.2011 made in M.A.C.T.O.P.No. 85 of 2010 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Poonamalee.

For appellant : Mrs. Subadra for Mrs.M.Malar
For Respondent-1 : Ex Parte
For respondent-2 : Mr.J. Chandran

J U D G M E N T

This appeal has been filed against the Judgment and Decree dated 30.12.2011 made in M.A.C.T.O.P.No. 85 of 2010 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Poonamalee.

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

3.It is the case of the appellant that on 02.07.2009 at about 12.45 hrs, when the appellant was riding his two wheeler bearing Registration No. TN 20 As 4641 on Koyambedu 100 feet road, opposite to EB office, the first respondent's motor cycle bearing Registration. No. TN 10 S 4813 driven by its rider came in a rash and negligent manner and hit the appellant's motor cycle. Due to the impact the appellant sustained grievous injuries. The accident occurred only due to the rash and negligent driving of the rider of the first respondent's motor cycle. Hence, the appellant/claimant filed a claim petition, before the Tribunal seeking Rs.10,00,000/- as compensation.

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4.The Tribunal Considering the materials available on record awarded a sum of Rs.57,900/- as compensation with

interest at 7.5% p.a from the date of petition till the date of realization.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. In order to prove the claim before the Tribunal, on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and 10 documents viz., Ex.P1 to Ex.P10 were marked. On the side of the respondent no witnesses were examined and no documents were adduced.

7. The learned counsel for the appellant submitted that the appellant sustained fracture in lateral condyle left Tibia and multiple injuries all over the body. He would further contend that he is a Electrician in Heavy Vehicles Factory, Avadi and thereby earning Rs.25,000 per month. Due to the injuries sustained in the accident he was not able to continue his work as before. He also contend that the Tribunal ought to have adopted multiplier method to arrive the income under the head loss of income. Therefore, he prays for enhancement of compensation.

8. The learned counsel for the second respondent/Insurance Company denied the manner of the accident. He would also contend that the accident occurred due to the rash and negligent driving of the rider of the first respondent's two wheeler. In any event the award passed by the Tribunal is very excessive.

9. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. Whether the accident was occurred due to the rash and negligent act or the first respondent's driver and the claimant has sustained injuries due to the above accident? Based on Ex.P1/F.I.R the Tribunal arrived at a conclusion that the accident has occurred due to the rash and negligent driving of the rider of the first respondent's vehicle. The 2nd respondent even though denied the manner of the accident, but failed to prove that the negligence exists on the part of the appellant. Hence, the finding of the Tribunal does not require interference by this Court and the same is confirmed as such.

10. With regard to quantum, on the basis of Ex.Ps.4 and 5 the Tribunal has awarded Rs.5,000/- each towards Transport to Hospital, Extra Nourishment and pain and suffering. Based on Ex.P.10/Disability Certificate and Ex.P.8/Pay slip the Tribunal has awarded Rs.5,000/- and Rs.35,000/- towards the head Loss of income and disability. Apart from this Rs.2,900/- was awarded towards Medical Expenditure. Thus, the total compensation is quantified to Rs.57,900/-

11. In view of the above this Court observed that no amount was awarded towards attender charges. Hence, Rs.5,000/- is awarded towards the same. The head loss of income and Disability is enhanced to Rs.10,000/- and Rs.75,000/- respectively. All

other heads remains intact. Thus, the award passed by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.5,000/-	Rs.10,000/-
Transportation	Rs.5,000/-	Rs.5,000/-
Extra Nourishment	Rs.5,000/-	Rs.5,000/-
Medical Expenditure	Rs.2,900/-	Rs.2,900/-
Disability	Rs.35,000/-	Rs.75,000/-
Pain and sufferings	Rs.5,000/-	Rs.5,000/-
Attender Charges	-Nil-	Rs.5,000/-
Total	Rs.57,900/-	Rs.1,07,900/-

12. With the above said modification the award amount is enhanced to Rs.1,08,000/- (Rs. 1,07,900/- is rounded off to Rs.1,08,000) from Rs.57,900/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the amount awarded by this Court along with 7.5% interest p.a from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Smn

To

1.The Motor Accidents Claims Tribunal,
Fast Track Court No.I, Poonamallee.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 9905

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