

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3438 of 2013

K.Devendhiran

... Appellant/Petitioner

vs.

1.M/s.A.P.R.Logistics,
No.9, Devadoss Street,
Vedachalam Nagar,
Chengalpattu, Kanchipuram District.

(1st respondent exparte in lower Court
Hence notice to 1st respondent may be
dispensed with)

2.M/s.ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabai Centre,
Nungambakkam High road,
Chennai - 600 034.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 21.12.2012 in M.C.O.P.No.4211 of 2010 on the file of the Motor Accident Claims Tribunal, Vth Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Sankaralingam

For Respondents : R1- Exparte

Mrs.R.Sreevidhya for R2

सत्यमेव जयते

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.4211 of 2010 on the file of the V Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.6,75,000/- restricted to Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 27.10.2010.

2. On 27.10.2010, at about 07.00 pm, the appellant / claimant was crossing Velacherry main road, near Puliyamara Bus Stop, Medavakkam and at that time, a bus bearing Registration

No.TN 19 2765, driven by its driver in a rash and negligent manner, hit him, due to which, the appellant / claimant sustained grievous injuries. The contention of the appellant / claimant is that the accident took place due to the rash and negligent driving of the driver of the said bus. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 and PW2 were examined and Exs.P1 to P7 were marked. On the side of the respondents, no documentary or oral evidence was marked.

4.The first respondent remained absent before the Tribunal and therefore, set ex-parte. The ICICI Lombard General Insurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.27,000/- together with interest at the rate of 7.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal.

5. The learned counsel appearing for the appellant submitted that the appellant had taken treatment at Kamatchi Memorial Hospital as inpatient from 27.10.2010 to 29.10.2010. Thereafter, he had taken treatment at Christudas Hospital from 04.03.2011 to 07.03.2011 and further he had undergone continuous outpatient treatment. He further submitted that PW2 Doctor has assessed the disability at 40% and the Tribunal has not at all considered the same for awarding compensation. He submitted that no amount was awarded under the head attender's charges. He submitted that the compensation awarded under other heads are also meagre and prayed for enhancement of the same.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / claimant and second respondent and perused the materials available on record.

8. From the claim petition, it is seen that the appellant / claimant was working as a watchman, aged 55 years, earning a sum of Rs.5,500/- per month. From the materials available on record, it is seen that the appellant / claimant sustained concussion brain, post traumatic vertigo and had undergone inpatient treatment from 27.10.2010 to 29.10.2010 at

Kamatchi Memorial Hospital. It is also seen that thereafter, he had taken treatment at Christudas Hospital from 04.03.2011 to 07.03.2011. Dr.J.R.R.Thiagarajan (PW2) has assessed the disability at 40%. However, the Tribunal has not considered the same. This Court is of the considered opinion that considering the nature of injuries, the disability can be fixed at 20%. Since, the accident happened in the year 2010, Rs.3,000/- per percentage of disability can be awarded. Therefore, Rs.60,000/- (20% x Rs.3,000/-) is awarded towards disability. The Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings, loss of income, transportation and extra nourishment in total and the same is hereby modified and awarded separately. Considering the year of the accident, a sum of Rs.5,000/-, Rs.5,000/- and Rs.15,000/- are awarded towards transportation, extra nourishment and pain and sufferings respectively. In the absence of evidence, the notional income is fixed as Rs.3,500/- per month and loss of income is awarded for two months ie., Rs.7,000/-. No amount was awarded under the heads attender's charges and damage to clothes and hence a sum of Rs.5,000/- and Rs.1,000/- are awarded towards the same respectively. The appellant / claimant produced medical bills (Ex.P6) to the tune of Rs.1,928/- and it is hereby rounded off and Rs.2,000/- is awarded towards medical expenses. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Disability	Nil	60,000
2	pain and sufferings, loss of income, transportation and extra nourishment	25,000	Nil
3	Transportation	Nil	5,000
4	Extra nourishment	Nil	5,000
5	Loss of income	Nil	7,000
6	Pain and sufferings	Nil	15,000
7	Attender's charges	Nil	5,000
8	Damage to clothes	Nil	1,000
9	Medical expenses	1,928	2,000
	Total	Rs.26,928/- Rounded off to Rs.27,000	Rs.1,00,000/-

9. In the result, this Civil Miscellaneous Appeal is

partly allowed and the compensation awarded by the Tribunal at Rs.27,000/- is hereby enhanced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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, to the credit of MCOP.No.4211 of 2010 on the file of the Motor Accident Claims Tribunal / V Court of Small Causes, Chennai within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.

2.Section Officer, VR Section,
High Court of Madras,
Chennai.

+1cc to Mr.S.Sankaralingam, Advocate, S.R.No.15034

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No. 15782

C.M.A.No.3438 of 2013

SR(CO)

GN(19/12/2020)

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