

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3702 of 2013

M.Jayachandran

... Appellant / Petitioner

vs.

- 1.Jayakrishnan
- 2.ICICI Lombard General Insurance Company Limited,
Raja Annamalaipuram,
Near Iyyapa Temple, Chennai - 28.
... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 07.03.2011 in M.C.O.P.No.4425 of 2007 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents : R1- Exparte

Mrs.R.Sreevidhya for R2

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.4425 of 2007 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, 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.2,50,000/- for the injuries sustained by him in a road accident that took place on 27.07.2007.

2. On 27.07.2007, at about 18.00 hours, the appellant / claimant was riding a motorcycle bearing Registration No.TN 20 AR 1029 near M.K.B.Nagar, West Avenue Road, Vyasarpadi. At that time, an Auto bearing Registration No.TN 05 U 1342, driven by its driver in a rash and negligent manner, hit the motorcycle, due to which, the appellant / claimant fell down and 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 Auto. 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 P8 were marked. On the side of the respondents, no oral or documentary evidence was marked.

4. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The ICICI Lombard General Insurance Company contested the claim petition. After analysing the oral and documentary evidences on record, the Tribunal awarded compensation of Rs.1,10,100/- 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 / claimant submitted that the Tribunal erred in reducing the disability assessed by the Doctor from 45% to 35%. He submitted that the appellant / claimant has taken continuous treatment for the injuries sustained by him and therefore, the Tribunal ought to have adopted multiplier method for awarding compensation. He also prayed for awarding compensation under the heads future medical expenses, attender's charges and loss of amenities. He further 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 is a labourer, aged 29 years, earning a sum of Rs.6,000/- per month. In the absence of any evidence, the Tribunal fixed the notional income as Rs.4,500/- per month and it is hereby confirmed. A perusal of Discharge summary (Ex.P3) shows that the appellant / claimant was admitted in the Government Stanley Hospital on 27.07.2007 and discharged on 08.10.2007 and that he underwent a surgery on 25.09.2007. From the materials available on record, it is seen that the appellant / claimant sustained wound in left anterior lateral aspect of

right thigh, tenderness and laceration of left leg, supra condyle fracture of right femur. Dr.N.Saichandran (PW2) has assessed the partial permanent disability as 45%. However, the Tribunal has reduced the same to 35%. Considering the nature of injuries, this Court is fixing the disability at 40% and a sum of Rs.2,000/- per percentage of disability is awarded. Hence, Rs.80,000/- is awarded towards permanent disability. The appellant / claimant is a labourer and hence he would not have attended his regular work atleast for six months and hence Rs.13,500/- awarded under the head loss of income is hereby enhanced to Rs.27,000/- (Rs.4,500/- x 6 months). In view of the injuries sustained by the appellant / claimant, this court is of the opinion that the compensation awarded under the heads transport charges, extra nourishment and pain and sufferings are very meagre and hence, they are enhanced to Rs.5,000/-, Rs.5,000/- and Rs.20,000/- respectively. The Tribunal has not awarded any amount under the heads attender's charges and loss of amenities and therefore, Rs.5,000/- and Rs.5,000/- are awarded towards the same respectively. All the other heads awarded by the Tribunal are just and therefore no interference is needed. 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	Permanent disability	70,000	80,000
2	Loss of income during treatment	13,500	27,000
3	Transport charges	1,000	5,000
4	Extra nourishment	2,000	5,000
5	Damage to clothes and articles	1,000	1,000
6	Medical expenses	7,600	7,600
7	Attender's charges	Nil	5,000
8	Pain and sufferings	15,000	20,000
9	Loss of amenities	Nil	5,000
	Total	Rs.1,10,100/-	Rs.1,55,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,10,100/- is hereby enhanced to Rs.1,55,600/- 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.4425 of 2007 on the file of the Motor Accident Claims Tribunal / II Small Causes Court, 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

//True Copy//

Sub Assistant Registrar

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To

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

Copy to

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

+1 cc to Mr.A.A.Venkatesan, Advocate Sr.No. 15164

+1 cc to Ms.R.Sree Vidya, Advocate Sr.No. 15779

VGI (CO)

RMP (18/12/2020)

सत्यमेव जयते

C.M.A.No.3702 of 2013

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