

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3728 of 2013

R.Manivannan

... Appellant/Petitioner

Vs.

1.Shri Balaji Agencies
12, Seethammal Extension,
II Cross street, Teynampet,
Chennai-18.

(First respondent remained exparte before Tribunal)

2.New India Assurance Company Ltd,
45, 5th floor,
Moore Street, 2nd line beach,
Chennai -1. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.1234 of 2012 dated 24.07.2013 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellants : Mrs.Subadra for M/s.M.Malar

For Respondents : Mr.G.Udhaya Sankar for R2
R1 Exparte

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MCOP.No.1234 of 2012 dated 24.07.2013 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2. On 02.03.2012 at about 14.45hrs, the claimant was riding his motorcycle bearing Reg.No.TN09-BD-9264 at Guindy Estate Road, Alandur road junction from south to north direction. At that time, a Tata Magic van bearing Reg.No.TN07-

BC-5076 which was driven by its driver in a rash and negligent manner endangering the public safety and hit the petitioner's motorcycle.

3. The case of the second respondent/insurance company is that the injuries sustained by the claimant is only simple in nature, the offending vehicle was plied without valid insurance coverage, permit, fitness certificate and the driver of the van did not possess valid driving licence.

4. In order to prove the case of the claimant, PW1 and PW2 were examined and marked Ex.P1 to Ex.P9. No oral and documentary evidence has been adduced on the side of the respondents.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that PW1 has clearly stated that the injured sustained injuries due to the rash and negligent driving of the first respondent vehicle. There is no contra evidence against the evidence of PW1. The disability assessed by the Doctor is 50% and the Tribunal has taken only 25% to assess the disability factor. The Tribunal failed to award any amount under the head of loss of income.

7. The learned counsel for the second respondent/insurance company submits that the Tribunal has rightly considered the entire facts and the nature of injuries sustained by the claimant and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has rightly considered the case of the claimant, the disability assessed by the Doctor is 50%, the Tribunal has taken only 25% by considering the age of the claimant, this Court can consider 30% for calculating the disability (Rs.3000 x 30%=Rs.90,000). With regard to the loss of income, the claimant is aged about 66 years and receiving pension from the Government and not stated anything about the avocation.

9. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation are as follows :-

Sl.No.	Heads	Amount
1	Transportation, Extra nourishment & Damages to cloth	25,000
2	Medical expenses	32,000
3	Attender charges	5,000

Sl.No.	Heads	Amount
4	Loss of amenities	20,000
5	Pain and sufferings	25,000
6	Disability (Rs.3000x30%)	90,000
	TOTAL	1,97,000

10. The compensation of Rs.1,30,000/- is enhanced to Rs.1,97,000/-. The same is payable with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh

To

The Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.

Copy To

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 8851
+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No. 8511

C.M.A.No.3728 of 2013

RSK(CO)
GN(31/07/2020)