

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.530 of 2016

M.Prakash Kumar

.. Appellant/Petitioner

vs.

1.Rakesh Kumar

2.M/s.IFFCO TOKIO General Insurance Co. Ltd.,
No.26/195, 2nd Floor, North Usman Road,
T.Nagar,
Chennai-600 017.

Now present address:

No.128, Habbibullah Road,
IFFCO Bhavan, 4th Floor,
T.Nagar,
Chennai-600 017.

.. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.06.2015 passed in M.C.O.P.No.3645 of 2012 on the file of the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.T.G.Ravichandrran

For Respondent-1 : Not Ready in Notice

For Respondent-2 : Mr.J.Michaelvisuvasam

J U D G M E N T

The present Civil Miscellaneous Appeal is filed questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal.

2. Admittedly, the accident occurred on 22.05.2011 at about 09.30 hours in the down side of the Gurusami Bridge from North to South direction at Chetpet, Chennai.

3. The petitioner was riding a Motor Cycle bearing Registration No.TN-01-AK-0102 as a pillion rider. On account of the accident, the petitioner sustained grievous injuries, more specifically, head injury, diffuse axonal injury and multiple injuries all over the body.

4. The claim petition was filed by the claimant, seeking compensation of Rs.18,30,000/-

5. The Tribunal adjudicated the issues and arrived a conclusion that the first respondent's two wheeler bearing Registration No.TN-01-AK-0102 was responsible for the accident.

6. As far as the policy coverage is concerned, the Tribunal found that the coverage is very much available and the claimant is entitled for compensation. Thus, the Tribunal found that the coverage is very much available and the claimant is entitled for compensation. Accordingly, the Tribunal proceeded deciding the quantum of compensation.

7. PW-2 Dr.M.Saravana Bavanantham assessed the disability of 60% for the injuries sustained by the petitioner and deposed that head injury, loss of consciousness plus glass glow coma scale poor, confusion on neck and the post Traumatci Sequelae long with C.T. Brain Disarthria (His speech is not clearly punctuated slurred due to Brain Damage grade one) - 15%. PW-1 also deposed about the same difficulties. PW-2 has not given treatment to the petitioner and the Doctor also admits that the petitioner has undergone a Surgery. Keeping all these, the disability assessed by PW-2 is just and reasonable and acceptable one. Since the petitioner was aged 21 years at the time of accident, Rs.2,000/- is awarded per percentage.

8. Relying on the said deposition of PW-2 Doctor, the learned counsel for the appellant reiterated that when the Doctor's assessment of disability was accepted by the Tribunal, while discussing the issues, the compensation was granted only for 50% disability and therefore, the Tribunal has committed an error. This apart, the Tribunal has granted less compensation in various other heads, which required further enhancements.

9. The learned counsel appearing on behalf of the respondent/ Insurance Company, disputed the contentions by stating that the Tribunal has rightly restricted the percentage of disability by taking the over all facts and circumstances and it is not necessary to strictly adopt the disability percentage provided by the Doctor. Thus mere reduction of 10% would not be a ground to grant the enhancement of compensation.

10. This apart, with reference to all other aspects, the Tribunal has adopted reasonable approach keeping in mind that the claimant was a student at the time of accident and he was studying B.Com., in D.G.Vaishnav College, Chennai. Thus, the appeal is to be dismissed.

11. This Court is of the considered opinion that perusal of the findings with reference to the deposition of PW-2, it is unambiguous that the Tribunal arrived a finding that the disability assessed by the PW-2 Doctor is just and reasonable and acceptable one. When such a finding is arrived and when there is no reason whatsoever to reduce the percentage of disability from 60% to 50%, the nature of the injuries as well as the treatments taken are also concern in this regard.

12. The claimant was admitted in the hospital and treated as an inpatient for about 32 days and the injury is a head injury and the learned counsel for the appellant brought to the notice of this Court that the appellant has discontinued his education, which resulted huge loss not only monetarily but also in his career and all future prospects.

13. Thus, the judgment and decree passed by the Tribunal in MCOP No.3645 of 2012 dated 25.06.2015 is modified and the enhanced compensation of Rs.10,26,270/- is awarded as per the details given below:-
Rs.

Future Prospects (including social and marital amenities)	1,00,000/-
Transport to Hospital	20,000/-
Extra Nourishment	25,000/-
Damage to Clothing	500/-
Medical Expenses	5,25,770/-
Attender Charges	25,000/-
Loss of Amenities	50,000/-
Pain and Sufferings	1,00,000/-
Disability of 60% at Rs.3,000/- per percentage	1,80,000/-

	10,26,270/-

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Thus, the total amount of compensation payable to the claimant comes to Rs.10,26,270/-.

14. It is brought to the notice of this Court by the learned counsel appearing on behalf of the second respondent/Insurance Company that the award amount had already been deposited. Thus, the second respondent/Insurance Company is directed to deposit the enhanced compensation amount along with accrued interest at the rate of 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the said amount with interest by filing an appropriate application and the payments are to be made only through RTGS. The appellant/claimant is liable to pay the additional court fee for the enhanced compensation.

15. Accordingly, C.M.A. No.530 of 2016 stands allowed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn

To

The III Judge,
Small Causes Court-cum-
The Motor Accidents Claims Tribunal,
Chennai.

copy to

The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.T.G.Ravichandran Advocate sr19887

+1 cc to M/s.J.Michael Visuvasam Advocate sr19395

CMA No.530 of 2016

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