

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2568 of 2019

G.S.Habeebullah

.. Appellant

Vs.

1. S.Gouthamchand

2. ICICI Lombard General Insurance Co. Ltd.,
No.140, Chottabai Centre,
Nungambakkam High Road,
Chennai - 600 034.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 22.10.2018, made in M.C.O.P.No.710 of 2014, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent 1 : No appearance

For Respondent 2 : Mr.K.Poomalai

J U D G M E N T

Not feeling satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this appeal is as follows:

(i) On 30.06.2012, at about 2 p.m., when the appellant/claimant was riding his two wheeler in V.O.C.Nagar Market street at Chennai, a two wheeler bearing Registration No.TN-04-S-8932, owned by the first respondent herein, came in a rash and negligent manner and hit the appellant/claimant vehicle, in which, he was thrown away and sustained grievous injury.

(ii) The appellant/claimant suffered serious injury in his right foot and has taken treatment in the hospital. As the appellant/claimant sustained disability at 30%, he filed a claim petition before the Tribunal seeking Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

3. The first respondent who is the owner of the vehicle remained ex parte. The second respondent insurance company contested the claim petition by stating that the accident had taken place due to the rash and negligent driving of the appellant/claimant and hence the insurance company is not liable to pay compensation. That apart, the appellant/claimant has only sustained minor injuries and it is not a permanent disability and the compensation claimed by the appellant/claimant is excessive.

4. In order to prove the claim, the appellant/claimant examined himself as P.W.1 and examined one Dr.Saravanabhavanandham as P.W.2 to speak about his disability. He has also marked as many as fourteen documents as Exs.P1 to P14. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record came to the conclusion that accident took place due to the rash and negligent driving of the first respondent and as the two wheeler was insured with the second respondent, fixed the liability on the insurance company. So far as the quantum of compensation is concerned, based on the medical evidence, the Tribunal came to the conclusion that there was no disability and the appellant/claimant is not entitled for compensation towards disability and also loss of earning power. However, a sum of Rs.20,000/- was awarded for pain and sufferings; for loss of income a sum of Rs.16,000/- was awarded; a sum of Rs.5,000/- was awarded towards transport expenses; a sum of Rs.20,000/- was awarded towards extra nourishment; a sum of Rs.4,000/- was awarded towards damage to clothing; a sum of Rs.79,900/- was awarded towards medical expenses; a sum of Rs.20,000/- was awarded towards attender charges and a sum of Rs.20,000/- was awarded towards loss of amenities, thus, totalling a sum of Rs.1,84,900/- was awarded as compensation. Being aggrieved on the compensation awarded by the Tribunal at Rs.1,84,900/-, the appellant/claimant has filed the present appeal seeking enhancement.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. On perusal of the records, it could be seen that in the accident, the appellant/claimant has suffered degloving injury in his right foot and he was admitted in the hospital as inpatient from 30.06.2012 to 04.07.2012. The discharge summary has been marked as Ex.P5. Thereafter, he was once again admitted in the hospital from 27.07.2012 to 30.07.2012 and the said discharge summary has been marked as Ex.P6. P.W.2, the doctor assessed the appellant/claimant disability as 30% partial permanent disability. However, the Tribunal held that from a perusal of the disability certificate, it can be seen that it is not issued by the doctor who treated

the appellant/claimant or a Medical Board and thus concluded that the appellant/claimant is not entitled for any compensation under the head 'disability'. From a perusal of the medical records, it could be seen that the petitioner was suffering from injury in his right foot and according to him he had undergone plastic surgery and now after the accident, he could not able to stand for a long time and lift any material. P.W.2 evidence is also supporting his case. From the medical records also it could be seen that he was admitted twice in the hospital and undergone treatment.

8. In the above circumstances, the Tribunal ought not to have rejected the entire claim towards disability. Considering the nature of the injury sustained by the appellant/claimant, this Court is of the view that a sum of Rs.60,000/- can be awarded towards disability taking into consideration his disability at 20%. That apart for pain and sufferings the Tribunal has awarded a sum of Rs.20,000/-, which is now increased to Rs.25,000/-. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

9. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Disability @ 20%	-	60,000	Granted
2.	Pain and Sufferings	20,000	25,000	Enhanced
3.	Loss of Income	16,000	16,000	Confirmed
4.	Transport to hospital	5,000	5,000	Confirmed
5.	Extra nourishment	20,000	20,000	Confirmed
6.	Damage to clothing	4,000	4,000	Confirmed
7.	Medical Expenses	79,900	79,900	Confirmed
8.	Attender Charges	20,000	20,000	Confirmed
9.	Loss of amenities	20,000	20,000	Confirmed
	Total	1,84,900	2,49,900 (Rounded to Rs.2,50,000 /-	Enhanced by Rs.65,100/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby enhanced to Rs.2,50,000/-

together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. 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, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.710 of 2014, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.2,
Small Causes Court, Chennai.

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

+1 cc to Mr.K.Varadha, Advocate Sr.No. 36240

+1 cc to Mr.K.Poomalai, Advocate Sr.No. 36255

C.M.A.No.2568 of 2019

NRL(CO)

RMP(11/06/2021)