

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2567 of 2019

P.C.Ramesh Kumar

.. Appellant/Petitioner

vs.

1.S.Seethalakshmi

2.United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building,
4th floor, No.134,
Greams Road,
Chennai - 600 006.

.. Respondents /Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2019 passed in M.C.O.P. No.6093 of 2015 on the file of the learned Special Sub Judge No.I, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Ms.Revathy for Mr.R.Nalliyappan
For Respondent-1 : Mr.R.Venkatesan
For Respondent-2 : Mr.C.Paranthaman

J U D G M E N T

The judgment and decree dated 23.01.2019 passed in M.C.O.P. No.6093 of 2015 by the learned Special Sub Judge No.I, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant, who is the appellant herein, filed the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

3. The accident occurred on 20.07.2015 at about 15.30 Hours near Kathipara Police Booth, G.S.T. Road, Alandur. The Mount Traffic Investigation, Alandur registered a case in Crime No.357/M1/2015.

4. The appellant-claimant, who was aged about 54 years, at the time of accident, was working as Supervisor at Green Chennai Environment Company, M.K.B. Nagar, Vyasarpadi, Chennai. Due to the accident, he sustained grievous injuries, including fractures.

5. The claim petition was filed by the appellant-claimant and the second respondent/Insurance Company defended the claim petition.

6. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced.

7. The Tribunal, relied on the oral evidence of PW-1 as well as the documentary evidence Ex.P-1 FIR, arrived a conclusion that due to the rash and negligent driving of the driver of the car bearing Registration No.TN-38-AR-4999, the accident occurred.

8. There is no contra evidence to rebut the facts set out in the Ex.P-1 FIR. The evidence of PW-1 also corroborates with Ex.P-1 FIR. Thus, negligence was fixed on the driver of the car and accordingly, the quantum of compensation is fixed and a total compensation of Rs.3,24,400/- is awarded.

9. The learned counsel appearing on behalf of the appellant-claimant contended that the Disability Certificate was granted by the Doctor stating that the partial permanent disability is 35%. However, the Tribunal has taken 10% as disability. This apart, the accident occurred in the year 2015 and a sum of Rs.3,000/- is fixed per percentage of disability. Thus, the appellant-claimant has chosen to file the present Civil Miscellaneous Appeal for enhancement.

10. The award granted by the Tribunal is inadequate and not in commensuration with the gravity of grievous injuries sustained by the appellant-claimant due to the accident.

11. The learned counsel appearing on behalf of the second respondent-Insurance Company opposed the contentions of the learned counsel for the appellant-claimant, by stating that the Tribunal considered the nature of injuries and reduced the percentage of disability. The income of the claimant was fixed as Rs.7,000/-. This apart, Rs.3,000/- per percentage of disability is also reasonable with reference to the accident which occurred during the year 2015. Thus, the award is reasonable and no further enhancement needs to be granted. Thus, the Civil Miscellaneous Appeal is liable to be dismissed.

12. This Court is of the considered opinion that the

factum regarding the quantum of accident was established and the negligence was also fixed on the driver of the Court. The appellant-claimant is working as Supervisor in a Private Company. More importantly, the appellant-claimant has sustained fracture anterior and posterior wall and column right acetabulum with central dislocation of right hip, fracture right superior and inferior public rami and bilateral upper lobes centriacinar emphysema with subpleural bullae and the injuries appears to be grievous in nature.

13. The Doctor assessed the disability at 35%. The appellant-claimant has been treated as inpatient for 22 days. However, taking note of the fact that the Doctor, who issued Disability Certificate, was a Private Doctor and he has not given treatment to the appellant-claimant and the Tribunal has reduced the disability percentage.

14. Undoubtedly, the Doctor, who treated the appellant-claimant, had not been examined before the Tribunal. However, the appellant-claimant has been treated as inpatient for about 22 days and nature of injuries are undoubtedly grievous, more specifically, fractures and further the medical expenses meted out by the appellant-claimant is for Rs.2,07,853/-.

15. This being the factum, the Tribunal ought to have fixed the disability by reducing 10% and fixing 10% for disability is not proper. This apart, the accident occurred in the year 2015 and therefore, it would be appropriate if a sum of Rs.4,000/- per percentage is granted. Under these circumstances, this Court is inclined to enhance the compensation as detailed hereunder:-

	Rs.
Disability(Rs.4,000/-x25)	1,00,000/-
PainandSufferings	20,000/-
ExtraNourishment	15,000/-
Transportation Charges	5,000/-
Medical Expenses	2,07,853/-
Attender Charges	5,500/-
Lossof Earning (Rs.7,000/-x6)	42,000/-

Total	Rs. 3,95,353/-
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Thus, the appellant/claimant is entitled for a total

compensation of Rs.3,95,353/- with accrued interest at the rate of 7.5% per annum.

16. The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay additional court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this judgment. Payments are to be made through RTGS.

17. Accordingly, the judgment and decree dated 23.01.2019 passed in M.C.O.P. No.6093 of 2015 by the learned Special Sub Judge No.I, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai, stands modified and consequently, CMA No.2567 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Special Sub Judge No.I,
Special Sub Small Causes Court No.1-cum-
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
V R Section,
High Court Madras-104.

+1 cc to M/s.C.Paranthaman, Advocate Sr.No. 30046

CMA No.2567 of 2019

RLD(CO)
RMP(13/05/2021)