

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1088 of 2014

K. Venkatesan

.. Appellant

Vs.

1.D. Ramesh Kumar

2.National Insurance Company Limited,
Represented by its Branch Manager,
Anuradha Complex, Bangalore Road,
Krishnagiri.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 02.08.2011 made in M.C.O.P.No.686 of 2009 on the file of Motor Accident Claims Tribunal/Additional Special Judge, Krishnagiri.

For Appellant : Mr.M. Sriram

For R1 : No Appearance

For R2 : Mr.M.Krishnamoorthy

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 02.08.2011 made in M.C.O.P.No.686 of 2009 on the file of Motor Accident Claims Tribunal/Additional Special Judge, Krishnagiri.

2.The appellant is claimant in M.C.O.P.No. 686 of 2009 on the file of Motor Accident Claims Tribunal,Additional Special Judge, Krishnagiri.. He filed the said claim petition claiming a sum of Rs.3,00,000/-as compensation for the injuries sustained by him in the accident that took place on 19.01.2009.

3.The case of the petitioner is that on 19.01.2009 a.m when the appellant was standing with a flower parcel in the mud portion of the road at Billai kottai bus stop, waiting for the bus to send the flower parcel to the whole sale dealer at krishnagiri. At that time a Hero

Honda Cycle bearing Registration No. TN-24-A-0793, belonging to the 1st respondent and insured with he 2nd respondent, came from Mathur to Krishnagiri at a very high speed and dashed against the appellant. Due to the impact the appellant sustained injuries all over the body. The accident occurred due to the rash and negligent driving of the rider of the two wheeler. Hence, the appellant herein filed a claim petition before the Tribunal seeking Rs.3,00,000/- as compensation. The Tribunal after analyzing the materials available on record awarded Rs.50,500/- as compensation with 7.5% p.a.

4. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come up with this present appeal.

5. The learned counsel for the appellant submitted that the Tribunal ignored certain relevant facts and evidence on record while considering the case of the appellant and he also prayed to re-appreciate once again the evidences and witnesses pertaining to the case of the appellant and enhance the compensation.

6. The learned counsel for the second respondent/Insurance Company submitted that the rider of the two wheeler does not possess valid driving license at the time of the accident. He would further contend that the injuries sustained by the appellant are simple in nature, even though the Tribunal has awarded a huge amount as compensation. Hence, the award passed by the Tribunal does not require interference by this Court.

7. Heard both sides and perused the materials available on record.

8. Before the Tribunal, on the side of the appellant two witnesses were examined and five exhibits were marked. The respondent have not let in any evidence or marked any witness.

9. With regard to negligence aspect the appellant examined himself as P.W.1 and deposed that when he was standing in the mud portion of the Road, the rider of the two wheeler came in a rash and negligent manner from Mathur side towards Krishnagiri and dashed against the appellant. Due to the said impact the appellant suffered bone fracture on his right leg. Ex.p.1/F.I.R also corroborates with the deposition of P.W.1. The two wheeler has a valid and subsisting policy coverage at the time of accident. Hence, the Tribunal arrived at a conclusion that the rider of the two wheeler is the cause for the accident. Hence, the findings of the Tribunal is perfectly valid in the eye of law and does not suffer from any infirmity and the same is confirmed as such.

10. With regard to quantum, on a perusal of the records of the claimant, it reveals that the claimant has sustained fractures in right leg and due to the injuries sustained in the accident, the claimant was not able to sit, stand squat and walk and the claimant is now having chronic pain in the right leg. Dr. Ashok Kumar (PW2) has assessed the permanent disability as 40% and the Tribunal has reduced the same to 10% of functional disability and awarded a sum of Rs.2,000/- per percentage and quantified Rs.20,000/- towards the head permanent Disability.

11. It is seen from the claim petition that the claimant was a flower vendor and earning a sum of Rs.5,500/- per month. He has not produced any proper evidence to prove the income as required by law. Hence, in the absence of any documentary evidence, Rs.3,000/- is fixed as monthly income of the claimant and due to the injuries he was unable to work for at least for a period of 3 months and arrived Rs.9,000/- under the head partial loss of income. Considering the injuries sustained by the appellant Rs.10,000/- each was awarded towards the head pain and suffering and loss of amenities. Considering other relevant materials the Tribunal has awarded Rs.1,000/- and Rs.500/- towards Nutritious Food and Attenders Expenses. Thus, Rs.50,500/- was arrived as total compensation.

12. In view of the above, even though the Doctor has assessed 40% as disability the Tribunal has taken only 10% as disability and other heads also to be modified to some extent. Hence, this Court is inclined to interfere with the findings rendered with regard to quantum and the same is modified. Considering the fact that he is doing flower business Rs.5,000/- is fixed as monthly income of the appellant and due to the injuries he was not able to do his work for a period of six months hence Rs.30,000/- is awarded towards the head partial loss of income. Considering Ex.P.2/wound certificate the amount awarded under the heads Extra Nourishment and attender charges are enhanced to Rs.2,500/- and Rs.5,000/- The amount awarded under the heads pain and suffering and loss of amenities are confirmed as such.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Partial loss of income	9,000/-	Rs.30,000/-
2.	Temporary disability	20,000/-	20,000/-
3.	Nutritious Food	1,000/-	5,000/-

4.	Attenders expenses	500/-	2,500/-
5.	Pain and suffering	10,000/-	10,000/-
6.	Loss of amenities	10,000/-	10,000/-
	Total	Rs.50,500/-	Rs., 77,500/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.50,500/- is hereby enhanced to Rs.77,500/- together along with interest and costs from the date of petition till the date of deposit. The second respondent 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal/Additional Special Judge, Krishnagiri.

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

+1cc to Mr. Mukund, Advocate SR.No.5803

+1cc to Mr. M. Krishnamoorthy, Advocate SR.No.5814

C.M.A.No.1088 of 2014

A.SK (16/07/2020)