

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1089 of 2014

Sabeer

.. Appellant/claimant

Vs.

1.N.Lingappa,

2.The Branch Manager,

New India Assurance Company Ltd.,

Branch Office,

Bommasandra,

Bangalore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.02.2012 made in M.C.O.P.No.689 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.M.Sriram

For R1 : Notice not ready

For R2 : Mr.K.Padmanabhan

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 29.02.2012 made in M.C.O.P.No.689 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.689 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.04.2003.

3.The case of the appellant is that on 27.04.2003 at about 20.00PM, when the petitioner was travelling in a T.V.S. Suzuki Fiero as a pillion rider from Chandapuram to Hosur near Guest Line Circle in Bangalore to Hosur N.H. Road near Athipalli, a 407 Tempo bearing Regn.No.KA-13-2802 belonging to the 1st respondent and insured with the 2nd respondent driven by its driver in a rash and negligent manner and dashed on the T.V.S. Suzuki and caused accident. Due to the impact, the appellant sustained grievous injuries.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the tempo belonging to the 1st respondent and directed the respondents to pay a sum of Rs.92,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellant would submit that, the amount awarded by the Tribunal is contrary to law and against all probabilities of the cases. Due to the said accident, the appellant had sustained grievous injuries and the Tribunal has awarded only meager amount. Hence, the learned counsel for the appellant prayed to enhance the compensation awarded by Court below.

6.The learned counsel for the second respondent submitted that before the Tribunal, the 1st respondent/owner of the vehicle remained ex-parte. He denied all the averments made in the petition. The claim of Rs.5,00,000/- is highly excessive and baseless. The accident had occurred only due to the rash and negligent act of the appellant. There is no fault on the part of the driver of the 1st respondent. Hence, the respondents are not liable to pay the compensation amount and he prayed for dismissal of this appeal.

7.Heard Mr.M.Sriram, learned counsel appearing for the appellant and Mr.K.Padmanabhan, learned counsel appearing for the second respondent and perused the materials available on record.

8.A perusal of the records shows that the claimant has sustained grievous injuries, i.e., lacerated wound on dorsum of foot left exposing trompons and muscles of left foot and lacerated wound over the back of left foot 8 C.M., with heel pad avulsion and one simple injury and would have suffered a lot.

Dr.Devendiran (PW2) has assessed the partial permanent disability as 30%. Considering the facts and circumstances of the case, the Tribunal has accepted the same and fixed 30% of disability and the Tribunal has rightly awarded a sum of Rs.60,000/- (Rs.2,000/- per percentage of disability) towards disability, which stands confirmed by this Court. It is seen from the claim petition that the claimant was earning a sum of Rs.7,000/- per month. Considering the nature of the work and the injury sustained by the appellant, the trial Court awarded a sum of Rs.15,000/- towards loss of income to the appellant. By taking into account the treatment period, this Court is inclined to enhance the amount under the same and awards a sum of Rs.28,000/- (7000 X 4 months). The Tribunal has awarded a sum of Rs.7,000/- towards transportation, attender charges and extra nourishment, which is very meager and the same is enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings and the same is also hereby enhanced to Rs.15,000/- The amounts awarded by the Tribunal under other heads are confirmed. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	60,000/-	60,000/-	confirmed
2.	Loss of income	15,000/-	28,000/-	enhanced
3.	Pain and sufferings	10,000/-	15,000/-	enhanced
4.	Transportation Attenders Charge and Extra nourishment	7,000/-	15,000/-	enhanced
	Total	Rs.92,000/-	Rs.1,18,000/-	enhanced by - Rs.26,300/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.92,000/- is hereby enhanced to Rs.1,18,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are 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 already withdrawn, if any. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

sbn

To

1.The Motor Accident Claim Tribunal,
The Chief Judicial Magistrate,
Krishnagiri

copy to

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

+1 cc to Mr.Mukund R.Pandiyan Advocate sr7079

+1 cc to Mr.K.Padmanabhan Advocate sr6985

C.M.A.No.1089 of 2014

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