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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01..12..2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1606 of 2020

Jayachandran

... Appellant

-Versus-

1.V.Ajith

2.Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Nungambakkam,
Chennai 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 20.01.2020 made in M.C.O.P.no.5756 of 2016 by the Motor Accident Claims Tribunal (Special Sub Court-II, Motor Accidents Claims Tribunal, Court of Small Causes), Chennai.

For Appellant : Mr.S.Ravikumar

For Respondents : Mr.S.Arunkumar for R2

JUDGEMENT

The appellant is the claimant before the tribunal. Feeling aggrieved by the inadequacy of the compensation granted by the Motor Accidents Claims Tribunal (Special Sub Court-II, Motor Accidents Claims Tribunal), Chennai, the claimant has come forward with this appeal.

2. It is the case of the appellant/claimant that on 12.08.2016 at about 10.30 p.m. while he was riding his motor cycle bearing Regn. No. TN 05 BD 1492 from North to South at Contran Smith Nagar 4th Street Junction, Pattalam, another motor cycle bearing Regn. No. TN 01 AY 9372, belonging to the 1st respondent and insured with the 2nd respondent, which was being ridden in the opposite direction in a rash and negligent matter dashed against him as a result of which he suffered serious injuries. He was immediately admitted Government General Hospital, Chennai for treatment and thereafter, he was shifted for better treatment to Apollo Hospital, Chennai, where he was



taken treatment from 13.08.2016 to 27.08.2016 and had undergone surgery. Due to the impact of the head injury, he lost hearing of his right ear. Hence, seeking compensation of Rs.25,00,000/- he filed the claim petition against the respondents.

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3. The 1st respondent, the owner and rider of the at-fault two wheeler was remained absent before the tribunal and therefore, he was set ex parte. The 2nd respondent insurance company contested the claim petition contending that the accident was taken place due to the rash and negligent riding of the two wheeler by the injured claimant. In any event, the compensation claimed under various heads are exorbitant and highly excessive.

4. Before the tribunal in order to prove his case, the appellant/claimant examined himself as P.W.1 and one Prasath, the Manager of the Toyota Show Room, Ambattur, Chennai, where the appellant was employed was examined as P.W.2 and as many as 18 documents were marked as Exs.P.1 to P.18. Neither any witness was examined nor any document was marked on the other side. Pending trial, the appellant/claimant was referred to the District Medical Board for assessment of the disability suffered by him due to the injuries sustained in the accident and the disability certificate issued by the medical board was marked as Ex.C.1. On considering the available materials, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent riding of the two wheeler by the 1st respondent and as the two wheeler was insured with the 2nd respondent, 2nd respondent insurance company is liable to compensate the appellant for the injuries sustained in the road accident. So far as the quantum of compensation is concerned, considering the disability the tribunal decided a sum of Rs.3,000/- for each percentage and thus awarded a sum of $\text{Rs.3,000} \times 28 = \text{Rs.84,000/-}$ towards permanent and functional disability and another sum of Rs.2,40,046/- towards pain and sufferings, transport charges, nutritious food, damages to clothing and personal properties, loss of income, medical expenses, attender charges and future medical expenses. Feeling not satisfied with the quantum of compensation, the claimant is before this court with the instant appeal.

5. I have heard the learned counsel for the appellant/claimant and the learned counsel appearing for the 2nd respondent insurance company.

6. This court perused materials available on record carefully. The District Medical Board had issued Ex.C.1 Disability Certificate assessing the disability at 28%. Ex.C.1 speaks about the disability being suffered by the claimant as follows:-



"His disability is in Cranium due to post traumatic sequale skull and his percentage is 28%"

The claimant was working in a car showroom as Spray Painter and due to the impact of the injuries, hearing in the right ear has been impaired. But, however, the disability is only partial permanent. The evidence available on record would show that the claimant continues to work in the same company. Considering the fact that the accident was taken place in 2016 and all other attending circumstances, this court is of the view that awarding a sum of Rs.4,000/- for each percentage of disability would be just and appropriate and thus, the claimant is entitled to a sum of Rs.4,000 x 28 = Rs.1,12,000/- towards partial permanent and functional disability.

7. Insofar as pain and sufferings are concerned, considering the fact that the appellant was admitted as inpatient and had taken treatment for nearly two weeks and a surgery was also conducted, this court is of the view that awarding a sum of Rs.55,000/- towards pain and sufferings as against the award of Rs.33,000/- granted by the tribunal would be just and appropriate.

8. So far as the compensation awarded by the tribunal under the other heads, this court does not find any perversity or infirmity in the same and they appear to be just and reasonable and the same do not call for any interference of this court. The award of compensation passed by the tribunal stand modified accordingly as detailed below:-

Serial No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Partial Permanent and Functional Disability	84,000	1,12,000	Enhanced
2.	Pain and Sufferings	33,000	55,000	Enhanced
3.	Transport charges	14,000	14,000	Confirmed
4.	Nutritious Food	14,000	14,000	Confirmed
5.	Damages Clothing and Personal property	2,000	2,000	Confirmed
6.	Loss of Income	91,800	91,800	Confirmed
7.	Medical Bills	46,246	46,246	Confirmed
8.	Attender Charges	14,000	14,000	Confirmed



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Serial No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
9.	Future Medical Expenses	25,000	25,000	Confirmed
	Total	3,24,046	3,74,046	
	Rounded up to		3,75,000	Enhanced by Rs.50,954

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,24,046/- awarded by the Tribunal is hereby enhanced to Rs.3,75,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent is directed to deposit the award amount directed above along with interest and costs in the claim petition, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal
(Special Sub Court-II, Motor Accidents
Claims Tribunal, Court of Small Causes), Chennai.

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

+1cc to Mr.S.Ravi Kumar, Advocate, S.R.No.38398
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.38475

C.M.A.No.1606 of 2020

GMR(CO)
CB(09/09/2021)