



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.1795 of 2020

Mahendran

...Appellant

-Versus-

1. R.Ponnusamy

2. United India Insurance Company Limited,
Rep. by its Manager,
No.595, B2/B3, SRS Towers,
Mettur Main Road,
Bhavani.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 22.11.2018 made in M.C.O.P.No.459 of 2016 by the Motor Accidents Claims Tribunal (Court of IV Additional District Judge), Erode District at Bhavani.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.D.Bhaskaran for R2

JUDGEMENT

The claimant is the appellant herein. Seeking enhancement of compensation, he has come forward with this Civil Miscellaneous Appeal.

2. It is a case of injury. According to the appellant, on 08.05.2016, while he was walking at Periyapuliyur along Kavundapadi - Bhavani Main Road as a pedestrian from east to west on the extreme left side of the road, near Vaikkal, at about 07.45 p.m. the motor cycle bearing Regn. No. TN 33 D 2446, belonged to the 1st respondent and insured with the 2nd respondent, which was being driven by one Seerangan, hit against him as a result of which he sustained grievous injuries. He was admitted in private hospital at Erode and was taken treatment. He had to spent a sum of Rs.2,00,000/- towards medical expenses. At the time of accident, he was 29 years old and was earning a



sum of Rs.15,000/- per month by doing coolie work. Due to the impact of the injuries sustained in the road accident, he could not able to discharge his duties as before and not able to squat for long time. Hence, seeking a sum of Rs.7,00,000/- as compensation, he filed the claim petition against the respondents.

3. The 1st respondent - owner of the offending vehicle was remained absent before the tribunal and therefore, he was set ex parte. The 2nd respondent insurance company contested the claim petition claiming that the accident was taken place due to the negligence of the appellant only. The FIR was filed after 16 days of occurrence. The injuries suffered by the appellant were all simple in nature. At any rate, the compensation claimed is highly excessive and speculative.

4. Before the tribunal, in order to prove the case, the appellant/claimant examined himself as P.W.1 and one Dr.Mahendran was examined as P.W.2 and marked as many as 7 documents as Exs.P.1 to P.7. On the other side, one Mr.Loganathan was examined as R.W.1 and Mr.Jayakumar was examined as R.W.2 and a copy of the insurance policy, authorization letter and the letter from the office of the Regional Transport Officer were marked as Exs.R.1 to R.3 respectively.

5. On considering the materials which were placed on record by either side, the tribunal has come to a conclusion that the accident was taken place due to the rash and negligent riding of the rider of the two wheeler in question. Even though the tribunal found that there was a valid policy coverage for the motor cycle, as there was a violation of policy condition, the tribunal while fixing the liability on the 1st respondent - owner of the motor cycle, directed the 2nd respondent insurance company to compensate the injured. Insofar as compensation is concerned, the tribunal awarded a sum of Rs.76,709/- as compensation and the details of the heads under which compensation were awarded are as follows:-

Loss of Income during the period of treatment	:	10,000
Medical Expenses	:	46,709
Nutritious Expenses	:	5,000
Pain and Sufferings	:	10,000
Transport Expenses	:	5,000
Total		76,709

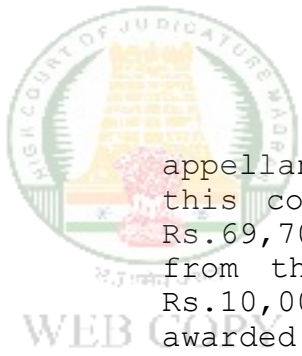


6. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

8. So, the question that arise in this appeal is, whether any case for enhancement is made out and if so , to what extent.

10. The Doctor who was examined as P.W.2 had only stated that the appellant suffered 20% disability. The tribunal has however discarded the evidence of P.W.2 for the reason that there was no evidence to show that the appellant suffered either permanent disability or partial permanent disability due to the injuries sustained in the road accident. This court does not find any infirmity in the same. However, considering the fact that the appellant was a collie and due to the head injury, he would have been ridden for long time, for the loss of income during such period, a sum of Rs.25,000/- could be granted in the place of Rs.10,000/- awarded by the tribunal.

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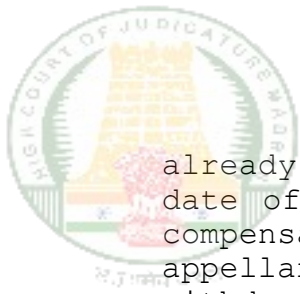


appellant from the date of accident till date of discharge, this court is of the view that the appellant is entitled to Rs.69,709/- rounded to Rs.70,000/- towards medical bills. Apart from the above, the appellant is also entitled to a sum of Rs.10,000/- towards nutritious food in the place of Rs.5,000/- awarded by the tribunal.

12. The appellant sustained head injury and there was internal bleeding in the head. He was taken treatment for about 19 days. According to the appellant, he continued to suffer difficulties due to the consequence of the injuries. Therefore, considering the nature of injuries and the period of hospitalization, this court is of the view that awarding a sum of Rs.50,000/- towards pain and suffering as against the compensation of Rs.10,000/- granted by the tribunal and granting a sum of Rs.15,000/- towards attender charges would be just and adequate. In so far as the compensation awarded by the tribunal towards transport expenses is concerned, the same appears to be just and reasonable and hence, the same does not call for any interference by this court. Accordingly, 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
1.	Loss of Income	10,000	25,000	Enhanced
2.	Medical Expenses	46,709	70,000	Enhanced
3.	Nutritious Food	5,000	10,000	Enhanced
4.	Pain and Sufferings	10,000	50,000	Enhanced
5.	Transport Expenses	5,000	5,000	Confirmed
6	Attender Charges	-	15,000	Granted
	Total	76,709	1,75,000	Enhanced by Rs.98,291/-

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.76,709/- awarded by the Tribunal is hereby enhanced to Rs.1,75,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above together 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 of compensation directed by this court, it will be open to the appellant to approach the tribunal for appropriate orders on withdrawal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-
Deputy Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Motor Accidents Claims Tribunal
(Court of IV Additional District
Judge), Erode District at Bhavani.
2. The Section Officer,
VR-Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.39646/20

C.M.A.No.1795 of 2020

GP(CO)
RGA(15/09/2021)