

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2263 of 2014

G. Kannan

... Appellant/Petitioner

Vs.

1. S. Sarath Kumar

(R1 was set ex-parte in the Trial Court)

2. Reliance General Insurance Co. Ltd.,

Reliance House, 6th Floor,

No.6, Haddows Road,

Nungambakkam,

Chennai - 600 006.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 15.04.2014 made in M.C.O.P.No.2707 of 2012 on the file of IV Judge Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.C.Munusamy

For R1 : Mr.G.Mohanakrishnan

For R2 : Mr.K.Moorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 15.04.2014 made in M.C.O.P.No.2707 of 2012 on the file of IV Judge Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The appellant is the claimant in M.C.O.P.No.2707 of 2012 on the file of IV Small Causes Court, IV Judge (Motor Accidents Claims Tribunal), Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.03.2012.

3. The case of the appellant is that on 27.03.2012 at about 7.15 hours, while the petitioner was riding the cycle along the Velacherry Main Road and while crossing the road opposite to Gupta Bhavan Sweets & Hotel, the motor cycle bearing Registration No. TN-22-BQ-0345 came from west to east direction in a rash and negligent manner dashed against the petitioner, thereby the petitioner sustained grievous injuries. At the time of accident, he was working as Security in George Security Service Pvt. Ltd., and was earning Rs.6,000/- per month. In spite of treatment, the petitioner becomes permanently disabled and not able to continue his job. Hence the petitioner filed a petition before IV Small Causes Court, IV Judge (Motor Accidents Claims Tribunal), Chennai claiming a sum of Rs.6,00,000/- as compensation from the respondents.

4. Denying the allegations, the second respondent-Insurance Company has filed a counter affidavit stating that the accident occurred due to the negligence of the petitioner. Moreover, the age, occupation and income of the petitioner are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the petitioner, the petitioner himself was examined as PW1 and marked certain documents as Exs.P1 to P11 and one Dr.K.J.Mathiazhagan was examined as PW2. Neither oral evidence let in nor documents marked on the side of the respondents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent driving of the first respondent and directed the second respondent as the insurer of the first respondent's vehicle, to pay a sum of Rs.2,06,000/- as compensation to the petitioner/appellant herein. Not being satisfied with the amount awarded by the Tribunal, the petitioner/appellant herein has come out with the present appeal seeking enhancement of compensation.

7. Heard Mr.C.Munusamy, learned counsel appearing for the appellant/claimant and Mr.G.Mohanakrishnan, learned counsel appearing for the first respondent and Mr.K.Moorthy, learned counsel appearing for the second respondent.

8. On perusal of the award dated 15.04.2014 passed by the tribunal, it is observed that PW1 has deposed that he was working as security in George Security Service Pvt. Ltd., and earning a sum of Rs.6,000/- per month. However, the Tribunal has taken into consideration that no supportive evidence has been

filed by the claimant for his income and due to Grade II compound fracture both bones on right leg, the Tribunal has taken the loss of earnings for five months and had taken the income at Rs.5,000/- per month. As there is no supportive evidence for his income, the loss of income suffered by the claimant should be Rs.3,000/- per month. Hence, considering the nature of fracture sustained by the claimant, the amount awarded by the Tribunal under the head Loss of earning is reduced to Rs.15,000/-. Consequently, the amounts towards Extra nourishment and pain and sufferings are reduced to Rs.10,000/- and Rs.20,000/-, respectively. The Tribunal has rightly awarded a sum of Rs.10,000/-, Rs.500/- and Rs.5,000/-, respectively, towards Transport to Hospital, Damages to clothes and Loss of amenities. The same are hereby confirmed. So far as the amount towards medical expenses is concerned, it has to be pointed out that as per Ex.P6, Ex.P9, Ex.P10 & Ex.P11, the medical expenses to the tune of Rs.24,825/- has been incurred by the claimant. But the Tribunal has rejected some receipts and awarded only Rs.11,441/-, which is in the opinion of the Court is very meager, and this Court is inclined to enhance the Medical expenses to Rs.20,000/-. Also towards disability, the Tribunal has fixed the disability as 55% and awarded a sum of Rs.99,000/- by taking Rs.1,800/- per percentage of disability under the said head. As per the settled principal of law and the various decisions of this Court and also considering the age and nature of injuries sustained by the appellant/claimant, this Court is inclined to enhance the amount to Rs.3,000/- per percentage of disability. If that yardstick is adopted, a sum of Rs.1,65,000/- (55 x 3,000) has to be awarded and it is awarded accordingly.

9. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	25,000/-	15,000/-	Reduced
2.	Transport to Hospital	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	15,000/-	10,000/-	Reduced
4.	Damages to clothes	500/-	500/-	Confirmed
5.	Medical expenses	11,441/-	20,000/-	Enhanced
6.	Loss of amenities	5,000/-	5,000/-	Confirmed
7.	Pain and suffering	40,000/-	20,000/-	Reduced

8.	Disability	99,000/-	1,65,000/-	Enhanced
	Total	Rs.2,05,941/-	Rs.2,45,500/-	Enhanced to - Rs.2,45,500/- Rounded off to R.2,46,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,06,000/- is hereby enhanced to Rs.2,46,000/- together along 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 1 and 2 are liable to pay compensation. As insurer of the first respondent's vehicle, 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

True Copy

Sub-Assistant Registrar

To

1. The IV Judge (Motor Accidents Claims Tribunal),
IV Court of Small Causes, Chennai.

Copy to
The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.G.Mohanakrishnan Advocate sr8151
+1 cc to Mr.C.Munusamy Advocate sr8312
+1 cc to Mr.K.Moorthy Advocate sr8287

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