



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.NO.1863 OF 2020

N.Senthilkumar

... Appellant/Petitioner

..Vs..

1. The KCP Limited,
Ramakrishna Building,
No.2, Dr.P.V.CH, Egmore,
Chennai 600 008

2. Bajaj Allianz Insurance Co. Ltd.,
No.497/498, 5th floor,
Isna Kattima Buildings,
Poonamallee High Road,
Arumbakkam,
Chennai 600 106

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 08.07.2019 made in MCOP No.6887 of 2014 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.S.Ravikumar

For Respondents : Mr.R.Rathna Thara
for R2

J U D G M E N T

The claimant is before this Court with this appeal seeking for enhancement of compensation.



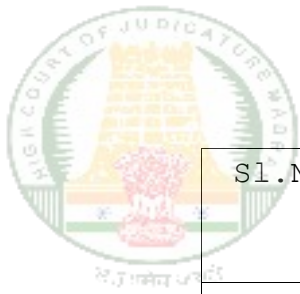
2. The case of the claimant in brief is as follows:

On 19.09.2014, at about 4.15 a.m., while the claimant/appellant was riding his motorcycle, along with his wife and 9 years old as pillion riders, proceeding from North to South directions, a Scoda Car bearing Registration No.TN 01 AB 4027, belongs to the first respondent, which was insured with the second respondent, came in a rash and negligent manner and suddenly stopped the car without any signal and dashed against his motorcycle, in which, the claimant/appellant and the pillion riders, sustained injuries. The claimant/ appellant was a partner in one M/s.Chennai Engineers., and was earning a sum of Rs.30,000/per month. Due to the injuries sustained in the accident, he is suffering with permanent disability and he is not able to perform his duties as before. Hence, claiming a sum of Rs.20 lakhs, a claim petition has been filed.

3. The first respondent/owner of the offending vehicle remained exparte and the second respondent/Insurance Company contested the claim petition on the ground that the claimant has driven the two wheeler in a rash and negligent manner and dashed against the car belongs to the first respondent and there is no negligence on the part of the driver of the car. That apart, the compensation claimed by the claimant is highly excessive and speculative.

4. Before the Tribunal, totally three claim petitions have been filed by the appellant, his wife and minor children and common trial was conducted. On the side of the claimants 3 witnesses were examined and as many as 19 exhibits have been marked. On the side of respondents, neither any witness nor any document has been marked.

5. The Tribunal, after considering the evidence available on record, held that the accident has taken place due to the negligent driving of the driver of the car belongs to the first respondent. So far as the quantum of compensation of the claimant/appellant is concerned, he was referred to Medical Board to assess the disability and the Medical Board assessed the disability at 40% partial permanent. Hence, the Tribunal fixed a sum of Rs.3000/- for each percentage and granted a sum of Rs.1,20,000/- towards disability. In respect of other heads, the Tribunal granted compensation as follows:



Sl.No.	Headings	Amount Awarded by the Tribunal Rs.
1	Pain and sufferings	30,000
2	Extra Nourishment and Transportation expenses	20,000
3	Disability	1,20,000
4	Attender charges	6,000
5	Loss of amenities	10,000
6	Medical expenses	1,51,134
7	Damages to clothes	1,000
8	Future Medical expenses	30,000
9	Loss of income for 4 months	60,000
	Total	4,28,134 rounded off Rs.4,28,200/-

Feeling aggrieved over the same, the claimant is before this Court, with this appeal.

6. Heard both sides and perused the materials available on records carefully.

7. The claimant is an Engineering graduate . It is stated that he was a partner in one M/s.Chennai Engineers. The accident has taken place in the year 2014, in which, he sustained the following injuries:-

" Segmental fracture right tibia and fibula comminuted displaced fracture right acetabulum (involving both anterior an posterior column with displaced inferior pubic rami fracture. Dislocation of right HIP."

He was admitted in the Apollo Hospital and undergone surgeries twice and he has spent more than Rs.6.5 lakhs. The Medical Board assessed the disability at 40%, which is a partial permanent disability and there is no evidence to show that due to the accident, the claimant has suffered a future loss of earning. In the said circumstances, it is not a case to apply multiplier



method to grant compensation for loss of future earning. However, considering the fact that the claimant, being an engineer suffered serious fracture in both the leg and hip and the accident has taken place in the year 2014, this Court is of the view that a sum of Rs.4000/- could be granted for each percentage of disability instead of Rs.3000/- granted by the Tribunal. and hence, the claimant is entitled for a sum of Rs.1,60,000/- towards disability instead of Rs.1,20,000/-

8. So far as the pain and sufferings is concerned, admittedly, the claimant was admitted in the hospital for more than two weeks and undergone surgeries twice. Hence, this Court is awarded a sum of Rs.50,000/- towards pain and sufferings instead of Rs.30,000/- awarded by the Tribunal and towards attender charges a sum of Rs.10,000/- is awarded instead of Rs.6000/- awarded by the Tribunal. Since the claimant has received a sum of Rs.5 lakhs through medi claim Insurance, a sum of Rs.1,52,000/- is granted towards medical expenses instead of Rs.1,51,134/- granted by the Tribunal. Towards loss of income a sum of Rs.80,000/- is granted instead of Rs.60,000/- granted by the Tribunal. In respect of other heads, the Tribunal has rightly granted compensation. and there is no reason to interfere with the same.

9. Considering all the above circumstances, the award passed by the Tribunal modified as follows:-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Pain and sufferings	30,000	50,000	enhanced
2	Extra Nourishment and Transportation expenses	20,000	20,000	confirmed
3	Disability	1,20,000	1,60,000	enhanced
4	Attender charges	6,000	10,000	enhanced
5	Loss of amenities	10,000	10,000	confirmed
6	Medical expenses	1,51,134	1,52,000	confirmed
7	Damages to clothes	1,000	1,000	confirmed
8	Future Medical expenses	30,000	30,000	confirmed



WEB COPY

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
9	Loss of income for 4 months	60,000	80,000	enhanced
	Total	4,28,134 rounded off Rs.4,28,200/	5,13,000	enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,28,200/- is hereby enhanced to Rs.5,13,000/- (Rupees Five Lakhs and Thirteen Thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/ Insurance Company 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To:

The Motor Accidents Claims Tribunal,
V Small Causes Court,
Chennai.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.41155

C.M.A.No.1863 of 2020

VGII(CO)
CS/08/09/2021