

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.275 of 2014

kumar(minor) .. Appellant/Petitioner  
rep.by his mother Chandra

Vs.

1.Mala

2.The New India Assurance Company Limited,  
No.45, Moore Street, Chennai 600 001

.. Respondents/Respondents

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the Award and decree passed in MCOP No.466 of 2007, dated 31.07.2013 by the Motor Accidents Claims Tribunal, III Judge, III court of Small Causes, Chennai.

For Appellant :Mr.S. Vijaya Kumar

For R1 : No Appearance

For R2 : Mrs.M.Kiruba for Mr.Anand N

JUDGMENT

This petition has been filed by the appellant to enhance the compensation awarded in MCOP No.466 of 2007, dated 31.07.2013 on the file of III Judge, Small Causes Court.

2.The appellant is the claimant. The first respondent is the owner of the offending vehicle involved in the accident and the second respondent is the insurer of the vehicle.

3. Brief facts necessary for disposal of the case is as follows:

On 09.03.2006 at about 19.00 hrs when the appellant was walking on the side of Poonamalle Road at Anagaputhur, Opposite to Ganesh Theatre, at that time a Lorry bearing Registration No.TN-69-A-8366 was driven by its driver in a rash and negligent manner and hit behind the appellant.

Thereby, the appellant sustained grievous injuries. The

accident occurred due to the rash and negligent driving of the driver of the lorry. Hence, he filed a claim petition against the owner and the Insurer of the offending vehicle seeking Rs.1,00,000/- as compensation. The Tribunal after analyzing the materials available on record awarded Rs.30,000/- as compensation with 7.5% interest from the date of petition till the date of realization.

4. Not being satisfied with the award passed by the Tribunal, the claimant has come up with this appeal.

5. The learned counsel for the claimant submitted that the Tribunal failed to appreciate the evidence and exhibits and awarded a meager amount as compensation. He further submitted that the Tribunal approximately awarded Rs.30,000/- towards Transportation, extra nourishment, medical expenses and pain and sufferings. The Tribunal ought to have distinguished the award amount in the relevant heads. He further submitted that the appellant has sustained wound over left parietal region and concussion brain and left subdural hemorrhage. Hence, the appellant is entitled to avail compensation under the head Pain and sufferings and mental agony. Therefore, he prays to enhance the award amount.

6. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that the Tribunal has appreciated the evidence in a proper perspective. He would further contend that there was a contradiction between the contents of F.I.R and the evidence. The learned counsel denies the averments in the claim petition and prays for dismissal of this petition.

7. Despite serving notice to the owner of the offending vehicle/first respondent, he has not chosen to engage any counsel. Hence, considering the paucity of time the appeal itself is taken up for final disposal, since the disposal will not affect the first respondent in any manner.

8. Heard both sides and perused the materials available on record.

9. Before the Tribunal, on the side of the appellant, two witnesses were examined and 5 documents were marked. The respondents have not let in any evidence and not produced any documents before the Tribunal.

10. With regard to negligence aspect, before the Tribunal mother of the injured was examined as P.W.1 and she deposed that the accident occurred due to the driver of the lorry and she also lodged a complaint, which is shown as Ex.P.1/F.I.R. There is also no eyewitness to the occurrence. Based on the above materials the Tribunal concluded that the driver of the lorry is the cause for the accident. Hence, the findings rendered on negligence by the Tribunal are based on settled principles of law, probabilities of case and weightage

of evidence.

11. Furthermore, no new document or evidence was forthcoming on the side of the appellant to come to a different conclusion than the one arrived at by the Tribunal. Hence, this Court is of the view that interference is uncalled for and the findings of the Tribunal regarding is confirmed.

12. With regard to quantum, this Court is inclined to interfere with the findings and re-appreciate the documents relating to quantum arrived by the Tribunal. Ex.P.5/Disability Certificate reveals the appellant sustained 30% as disability. But, considering the nature of injuries sustained by the appellant 20% is taken as disability and Rs.2,000/- per percentage is being awarded and quantified Rs.40,000/- under the head Disability. Based on the other relevant materials Rs.5,000/- each is being awarded towards Transportation, Attender charges and Extra Nourishment. Further Rs.10,000/- each is awarded towards pain and sufferings and Future Medical Expenses. Thus, the total compensation awarded by the this Court as follows:

| S.No. | Particulars             | Amount awarded by this Court |
|-------|-------------------------|------------------------------|
| 1     | Disability              | Rs.40,000/-                  |
| 2     | Pain and sufferings     | Rs.10,000/-                  |
| 3     | Extra nourishment       | Rs.5,000/-                   |
| 4     | Attendant charges       | Rs.5,000/-                   |
| 5     | Transportation charges  | Rs.5,000/-                   |
| 6     | Future Medical Expenses | Rs.10,000/-                  |
|       | Total                   | Rs.75,000/-                  |

13. Thus, the award amount is enhanced to Rs.75,000/- from Rs.30,000/-

14. With the above said modification this appeal is partly allowed. The second respondent/Insurance Company is directed to deposit from the date of petition till the date of realization the amount awarded by this Court with 7.5% interest p.a, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Order. After making such deposit the Tribunal is directed to deposit the amount in any one of the Nationalized Bank till the appellant attains majority and the interest accrued thereon, shall be withdrawn by the guardian of the minor claimant, once in three months, directly from the Bank, under intimation to the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

1.The III Judge, Small Causes Court,  
Chennai.

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

+1cc to Mr.S.Vijaya kumar, Advocate SR.6040

+1cc to Mr.N.Anand, Advocate SR.6525

C.M.A.No.275 of 2014

SSD(CO)  
CB(29/01/2021)



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