

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 11..11..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
Civil Miscellaneous Appeal No.3673 of 2019

S.Kesavan

..Appellant/Petitioner

-Versus-

1.R.Venkatachalam

2.ICICI Lombard General Ins. Co. Ltd.,
Chotah Bhai Centre,
2nd Floor,
#140, Nungambakkam High Road,
Chennai 600 034.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 21.01.2019 made in M.C.O.P.No.4141 of 2015 by the Motor Accidents Claims Tribunal / Spl. Sub Judge-I, small Causes Court, Chennai.

<i>For Appellant</i>	<i>: Mrs.Ramya V.Rao for Mr.A.N.Viswanatha Rao</i>
<i>For Respondents</i>	<i>: Mr.K.Poomalai for R2 No Appearance for R1</i>

JUDGEMENT

Feeling aggrieved by the inadequacy of compensation awarded by the Motor Accidents Claims Tribunal (Special Sub Court-I), Chennai, the claimant is before this court with this Civil Miscellaneous Appeal.

2. The case of the appellant/claimant before the tribunal is that on 26.07.2008 at about 10.30 a.m. when he was riding his motor cycle bearing Regn. No. TN 21 AX 1271 on Kelambakkam to Vandalour Road near Thiruvallur Nagar at Rathinamangalam , a Tipper Lorry bearing Regn. No. TN 22 BZ 7779, owned by the 1st respondent and insured with the 2nd respondent, which came in a rash and negligent manner in the opposite direction, dashed against his motor cycle as a result he was thrown away from the motor cycle and sustained grievous injuries. He was immediately admitted at Chettinad Hospital where he had undergone treatment from 26.07.2008 to 06.08.2008. Thereafter again from 25.08.2008 to 12.09.2008 he had taken treatment as inpatient and had undergone a surgery. The doctor who treated him assessed that

due to the injuries sustained in the road accident, the appellant suffers 25% disability. Hence, he filed the claim petition seeking compensation of Rs.15,00,000/- from the respondents.

3. The 1st respondent/owner of the lorry remained absent before the tribunal and therefore, he was set ex parte. The 2nd respondent/insurer contested the claim petition *inter alia* contending that the accident was taken place only due to the negligent riding of the motor cycle by the appellant. Hence, the insurance company is not liable to compensate the appellant. Further, there is no evidence to show that the appellant suffered permanent disability. The 2nd respondent has also disputed the monthly income of the appellant. In any event, the compensation as claimed in the petition is exorbitant and without any basis.

4. Before the tribunal, in order to prove his case, the appellant examined himself as P.W.1 and one Doctor K.J.Mathiazhagan, who assessed the disability was examined as P.W.2 and marked as many as 10 documents as Exs.P.1 to P.10 on his side. Neither any witness was examined, nor document was marked on the side of the respondents.

5. On considering the available materials, the tribunal came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the lorry belonging to the 1st respondent, which was insured with the 2nd respondent. Therefore, the respondents are liable to compensation the appellant. So far as the quantum of compensation is concerned, the tribunal on considering the medical evidence came to a conclusion on its own that due to the injuries sustained in the road accident, the appellant suffered disability at 10% and awarded a sum of Rs.30,000/- towards disability. Besides the above, the tribunal awarded compensation under different head as detailed below.

Disability	:	Rs. 30,000
Pain and Sufferings	:	Rs. 20,000
Extra Nourishment	:	Rs. 15,000
Medical Expenses	:	Rs. 5,000
Attender Charges	:	Rs. 7,250
Loss of Earnings	:	Rs. 21,000
Loss of Future Prospectus	:	Rs. 20,000
Total		Rs.1,44,459
Round up to		Rs.1,44,500

Not being satisfied with the quantum of compensation, the claimant is before this court with the instant appeal seeking enhancement of compensation.

6. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent and also perused the records carefully.

7. The primordial contention of the learned counsel for the appellant is that in the accident the appellant suffered grievous injuries and he was hospitalized twice as inpatient and undergoing treatment for nearly one month. According to the learned counsel, the appellant had spent huge sum towards medical expenses. That apart, the doctor, who had examined the appellant to assess the disability, certified that due to the injuries sustained in the road accident, the appellant suffered 25% disability. But, the tribunal on its own came to a conclusion arbitrarily de hors the medical evidence that the petitioner suffers only 10% disability on account of the injuries sustained in the road accident.

8. From the medical records, it could be seen that the appellant suffered following injuries:-

"Raw area right dorsum of foot
subluxation cuneiform fracture of 1st MT, 2nd
and 3rd MC Bone and fracture of PPX right index
finger.

Ex.P.2 and Ex.P.3 Discharge Summaries would show that the appellant was taking treatment in the hospital for nearly one month. The doctor who assessed the disability had issued the disability certificate to the effect that due to the injuries sustained in the road accident, the appellant suffered 25% disability. This was not accepted by the tribunal and the tribunal on its own came to a conclusion that the disability was only at 10%. There is no reason assigned to such a conclusion arrived at by the tribunal. Considering the injuries sustained and the medical evidence, which was not seriously disputed by the 2nd respondent in the cross examination of P.W.2, this court is of the view that the conclusion arrived at by the tribunal that the appellant suffered only 10% disability cannot be sustained. Thus, for the 25% disability, the appellant is entitled for a sum Rs.75,000/-. So far as, attendant charges is concerned, considering the period of treatment and the other circumstances of the case, this court is of the view that the amount awarded by the tribunal under this head is very low and therefore, the same could be enhanced from Rs.7,250/- to Rs.12,250/-. As far as the compensation awarded under the other heads, the appellant is not able to convince this court that the amount awarded under those head are on the lower side. The amounts awarded by the tribunal under other heads are just and reasonable. Therefore, this court do not want to interfere with the same and hence the same stand confirmed. The compensation

awarded by the tribunal is modified accordingly as follows:-

<i>Serial Number</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted or reduced (Rs.)</i>
1	Disability	30,000	75,000	Enhanced
2	Pain and Sufferings	20,000	20,000	Confirmed
3	Extra Nourishment	15,000	15,000	Confirmed
4	Transport Charges	5,000	5,000	Confirmed
5	Medical Expenses	26,209	26,209	Confirmed
6	Attender Charges	7,250	12,250	Enhanced
7	Loss of Earnings	21,000	21,000	Confirmed
8	Loss of Future Prospectus	20,000	20,000	Confirmed
	Total	1,44,459	1,94,459	
	Rounded up to	1,44,500	2,00,000	Enhanced by Rs.55,500/-

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,44,500/- awarded by the Tribunal is hereby enhanced to Rs.2,00,000/- 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 along with interest and costs awarded by the tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Special Subordinate Judge-I
(Motor Accidents Claims Tribunal), Small Causes Court, Chennai.
- 2.The Section Officer, VR-Section, High Court, Madras.

+lcc to Mr.K.Poomalai, Advocate SR.NO..36647

AKM/17.04.21/4P-4C/

C.M.A.No.3673 of 2019
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