

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.425 of 2014

A.Chandramohan

... Appellant/Petitioner

/versus/

1.K.Seerangan

2.National Insurance Co.Ltd.,
Branch Office,
F215, Maruthi Complex,
Sowrnepuri,
Salem-4.

3.A.Raman

4.The New India Insurance Co.Ltd.,
Rep.by its Divisional Office,
Premier Complex,
Saradha College Road,
Salem-16.

(1st and 3rd respondent was set exparte
hence, notice in the CMA may be
dispensed with)

... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation amount awarded judgment and decree dated 07.02.2011 made in M.C.O.P.No.399 of 2004 on the file of the MACT/Chief Judicial Magistrate, Salem by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.M.Guruprasad

For Respondents : Mr.S.Arunkumar for R2
Mrs.R.Srividhya for R4
R1 and R3-Exparte

J U D G M E N T

Being not satisfied with the quantum of compensation awarded by the Tribunal at Rs.1,18,950/-, the claimant / appellant is before this Court by way of filing this Appeal.

2.It is the case of the claimant before the Tribunal is at about 12.45 p.m. on 30.07.2004, while the appellant was travelling as a pillion rider on the scooter bearing Reg. No.T.N.28-X-0257, the said scooter hit the Mini auto bearing Reg.No.30-Y-6960 which was travelling on the same road. Due to the said accident, the appellant sustained fracture on his right thigh and minor abrasions on the left cheek and injuries all over the body. The appellant age is 21 at the time of accident and he was a lorry driver by profession and he was earning Rs.4,000/- per month. Stating that the 1st respondent / owner of the scooter, 2nd respondent / insurer of the said vehicle, the 3rd respondent owner of the Mini auto and the 4th respondent / insurer of the said vehicle are jointly and severally liable to pay the compensation to the claimant / appellant, for which, the claimant filed a petition before the Tribunal, claiming a sum of Rs.3,00,000/- as total compensation.

3.The tribunal, after the contest and after framing issues has ultimately fastened the liability on the 1st respondent herein / owner of the scooter and exonerate the respondents 2 to 4 from paying the compensation amount to the claimant. The Tribunal has also ultimately quantified the compensation under the following heads item wise and arrived at a total compensation at Rs.1,18,950/-;

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Disability at 1% per Rs.1,500/- (33%)	Rs.49,500/-
2.	Medical Expense	Rs.33,100/-
3.	Loss of income for 5 months	Rs.20,000/-
4.	X-ray	Rs.350/-
5.	Transport	Rs.3,000/-
6.	Extra Nourishment	Rs.3,000/-
7.	Pain and suffering	Rs.10,000/-
	Total	Rs.1,18,950/-

4.Heard the learned counsel for the appellant as well as the learned counsel for the 2nd & 4th respondent.

5.The learned counsel for the appellant at the outset submitted that the tribunal has failed to consider the documents produced before it in a proper perspective and if those documents are considered, the compensation awarded by the Tribunal should have been higher, but the tribunal failed to consider the future prospective including the marriage prospectives and other heads, accordingly, prays for the enhancement of the award passed by the tribunal.

6.The learned counsel for the 2nd & 4th respondents submitted that the tribunal has considered each and every aspect and awarded the compensation and hence the interference of the court is not called for. He further submitted that the tribunal based on the settled principles of law has arrived and fastened the liability on the owner of the scooter / 1st respondent herein and hence the findings recorded by the tribunal cannot be revisited.

7.This court has considered the said submissions of the learned counsel on either side and perused the materials available on record.

8.The learned counsel for the appellant relied upon the decision of this Court held in 2019(1) T.N.M.A.C. 751 in C.M.A.No.2512 of 2012 (The Divisional Manager, M/s.The National Insurance Co. Ltd., JN Street, Puducherry Vs. Thiru Sundaramoorthy and others) held as follows:

"...that pay and recovery can be ordered, that in view of the premium schedule under the act one policy and the nature of the policy being act one policy, the policy coverage provided by the appellant / insurance company is only to the extent of basis namely, the third party and compulsory personal accident coverage to the owner cum driver and no other amount has been ordered premium has been rendered and hence, as the deceased has travelled as a pillion rider only in two wheeler, the policy coverage cannot be extended. At the end, this court has submitted that the present appellant - National Insurance Company Limited is directed to 'pay' the entire compensation amount awarded by the Tribunal to the respondents 1 to 3 / claimants, and then, 'recover' the same from the owner of the vehicle, but no reason has been given by this court how is it possible for the National Insurance company to pay the compensation and recover it from the owner, and it does not apply to the present case on hand.

9.As far as the negligent aspect is concerned, the tribunal has taken into all the documents produced by the parties, F.I.R. and the witnesses and has fasten the liability on the owner of the vehicle / 1st respondent alone. There is no contra evidence

or documents available on either side to show that he is at fault and hence the findings of the negligent is confirmed as such.

10.As far as the quantum of compensation is concerned, the tribunal based on Ex.P2, Ex.P3, Ex.P8, Ex.P10 & Ex.P11 has awarded a sum of Rs.33,100/-, Rs.20,000/- and Rs.350/- towards medical expenses, loss of earning for 5 months and expenses towards x-ray. The amounts awarded under these heads commensurate with the 2nd schedule of M.V. Act as well as the settled principles of law and hence this award amount does not require any interference at the hands of this court and hence the amounts under these heads are confirmed as such.

11.As far as the amount awarded under the head of disability, the tribunal has taken Rs.1,500/- per percentage of disability and has awarded a sum of Rs.49,500/- for 33% of disability. The settled principles of law enunciating that a sum of Rs.2,000/- per percentage of disability should be taken for consideration for the head disability. If that yardstick has adopted by the tribunal, a sum of Rs.66,000/- has been awarded. It is not a dispute that the appellant is aged 21 at the time of accident and there was shortening of his leg by 3 cm and therefore he could not do his activities as before. This aspect was not taken into account by the tribunal while awarding compensation. Hence, the sum awarded at Rs.3,000/- towards transport, extra nourishment, pain and suffering are enhanced to Rs.5,000/-, Rs.5,000/-, Rs.20,000/- respectively. The appellant has been taking treatment for more than 20 days as well as from the nature of injuries, it is clear that he would be requiring future medication, the tribunal ought to have awarded some amount towards attender charges and hence a sum of Rs.5,000/- is awarded under that head. In final, the reconstruction break up details of the compensation awarded to the appellant reads thus.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability at 1% per Rs.1,500/- (33%)	Rs.49,500/-	Rs.66,000/-
2.	Medical Expense	Rs.33,100/-	Rs.33,100
3.	Loss of income for 5 months	Rs.20,000/-	Rs.20,000/-
4.	X-ray	Rs.350/-	Rs.350/-
5.	Transport	Rs.3,000/-	Rs.5,000/-
6.	Extra Nourishment	Rs.3,000/-	Rs.5,000/-

7.	Pain and suffering	Rs.10,000/-	Rs.20,000/-
8.	Attender charges	Nil	Rs.5,000/-
	Total	Rs.1,18,950/-	Rs.1,55,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs1,18,950/- is hereby modified to Rs.1,55,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified amount awarded 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 /claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected miscellaneous petition if any is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To.

1.The Chief Judicial Magistrate, Salem

Copy to

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

+1 cc to Mr.M.Guruprasad Advocate sr11519
+1 cc to Mrs.R.Sreevidhya Advocate sr11298
+1 cc to Mr.S.Arunkumar Advocate sr11025

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aa11/03/2021