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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3095 of 2019

Pushpakumar ... Appellant / Petitioner

Vs.

1.Senthilmoorthy

2.The Oriental Insurance Company Ltd.,

Divya Towers, II Floor,

Fort Main Road

Salem - 636 001.

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree in MCOP.No.554 of 2016 dated 01.03.2019, on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : R1 - No appearance
Mr.Chandrasekaran [R2]

J U D G M E N T

Not feeling satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.554 of 2016 dated 01.03.2019, the claimant is before this Court with this appeal for enhancement of compensation.

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

On 22.10.2015, at about 9.45 p.m., while, the appellant/claimant was riding his TVS XL moped bearing Registration No. TN 30 AH 7444, in Junction Main Road at Salem, a two wheeler bearing Registration No.34 W 5231



owned by the first respondent, which was insured with the second respondent, came in a rash and negligent manner and dashed against the appellant/claimant's two wheeler, in which , he sustained multiple injuries all over the body and he was admitted as inpatient in Sri Gokulam Hospital from 22.10.2015 to 29.10.2015. At the time of accident, he was 23 years old and earning a sum of Rs.15,000/- per month, and due to the accident, he sustained permanent disability and he is not able to discharge his duties as before. Hence, seeking compensation of Rs.15 lakhs.

3. The first respondent, owner of the vehicle remained exparte before the Tribunal. The second respondent /Insurance company contested the claim petition stating that the accident has taken place due to the negligent driving of the appellant/claimant and there is no negligence on the part of the first respondent. That apart, the claimant sustained only minor injuries and the compensation awarded by the Tribunal is highly excessive.

4. In order to prove his case, the claimant examined himself as P.W.1 and one Sanjay Anvikar, Doctor, as P.W.2 and marked as many as 8 exhibits. On the side of the respondents no witness was examined, and the Accident Register was marked as Ex.R1.

5. The Tribunal, after considering the materials, come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent's vehicle and held that the respondents are liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.1,36,893/- under various heads, which reads as follows:-

Sl .N o	Headings	Amount Rs
1	Pain and sufferings	25,000
2	Medical Expenses	91,393
3	Loss of Earnings	7,500
4	Transportation charges	2,500
5	Nutritional Expenses	5,000
6	Attender Charges	5,000
7	Damages for clothes	500
	Total	1,36,893

Not satisfied with the award of compensation, the appellant has filed the present appeal.



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

7. From the perusal of the records, it could be seen that due to the accident, the appellant sustained the following injuries:

1. Degloving injury right leg and left thigh with muscular laceration of lateral hamstrings in thigh.

2. Pneumothorax left side of chest.

P.W.2, Doctor, who has given treatment to the appellant, has stated that the injuries sustained by him are simple in nature and the appellant did not suffer any permanent partial disability. In the said circumstances, the Tribunal has awarded a sum of Rs.7500/- towards loss of income. However, considering the fact that the appellant sustained injury and bed ridden for some time, this Court is inclined to award a sum of Rs.17,500/- instead of Rs.7500/- as awarded by the Tribunal. The Tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings. It could be seen from the evidence of P.W.2 that the appellant was in the hospital nearly for a week and also undergone some procedure, and hence, this Court is inclined to award a sum of Rs.60,000/- towards pain and sufferings instead of Rs.25,000/- awarded by the Tribunal, and towards Extra Nourishment Rs.10000/- is awarded instead of Rs.5000/- awarded by the Tribunal and the Tribunal rightly awarded in respect of other heads and there is no reason to interfere with the same.

8. Considering the said 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	25,000	60,000	enhanced
2	Medical Expenses	91,393	91,393	confirmed
3	Loss of Earnings	7,500	17,500	enhanced
4	Transportation charges	2,500	2,500	confirmed
5	Nutritional Expenses	5,000	10,000	enhanced



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Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
6	Attender Charges	5,000	5,000	confirmed
7	Damages for clothes	500	500	confirmed
	Total	1,36,893	1,86,893	enhanced

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,36,893/- is hereby enhanced to Rs.1,86,893/- 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 respondents are 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 and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To:

The Motor Accidents Claims Tribunal,
Special Subordinate Judge No.II
Salem.

+1cc to Mr.E.Chandrasekaran , Advocate SR.No. 36204

+2ccs to Mr. C.Paraneedharan, Advocate SR.No. 36124

C.M.A.No.3095 of 2019

(CO)

A.SK(17.09.2021)