

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3793 of 2019

L.Amalraj

.. Appellant

Vs.

1. R.S.Enterprises,
No.20, Alagesan Street,
West Tambaram, Chennai - 45.
2. ICICI Lombard General Insurance Co.Ltd.,
Chhotabhai Centre No.140,
Nungambakkam High Road, Chennai - 34. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 06.06.2019, made in M.C.O.P.No.1420 of 2014, on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan
For Respondent 1 : No appearance
For Respondent 2 : Mr.K.Poomalai

J U D G M E N T

Not fully satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant, is before this Court with this appeal seeking enhancement of compensation.

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

(i) On 28.02.2014 at about 01.20 a.m. midnight, the appellant/claimant was riding his motorcycle in JN 100 feet road, Chennai, near Sivan Koil street, a lorry bearing registration No.TN-22-BY-8871, owned by the first respondent was parked in the middle of the road without any proper indication and in the dark, without noticing the lorry, the appellant/claimant dashed against the lorry and sustained injuries in the head. Immediately he was taken to Kilpauk Medical College Hospital and thereafter he was shifted to Apollo Hospital, Chennai, and had undergone surgery. Due to

the same, he suffered partial disability.

(ii) At the time of the accident, he was 29 years old and was working as a Constable and was earning a sum of Rs.22,000/- per month. Due to the injuries sustained in the accident, he could not able to discharge his duties as before. Hence, claiming a sum of Rs.24,00,000/- as compensation, the appellant/claimant has filed the claim petition before the Tribunal.

3. The first respondent / owner of the offending vehicle remained ex parte. The second respondent / insurance company contested the claim petition on the ground that the accident had taken place due to the rash and negligent driving of the appellant/claimant and hence the second respondent / insurance company is not liable to pay any compensation.

4. Before the Tribunal, in order to prove the case, the appellant/claimant examined three witnesses as P.Ws.1 to 3 and marked as many as eleven documents as Exs.P1 to P11. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record, came to the conclusion that the accident had taken place due to the negligence of the driver of the lorry, which was parked in the middle of the road without any proper indication. As the appellant/claimant was not wearing helmet, fixed 15% negligence on the part of appellant/claimant. In respect of the quantum of compensation, even though the appellant/claimant produced disability certificate assessing 40% disability vide Ex.P8 and also examined P.W.2 doctor to prove the same, the Tribunal fixed the disability at 15% and awarded a sum of Rs.50,000/- towards disability. So far as other heads are concerned, the Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering; Rs.50,000/- towards extra nourishment; Rs.50,000/- towards attender charges; Rs.25,000/- towards transportation and Rs.1,25,000/- towards medical expenses. Thus, the Tribunal arrived at a total compensation of Rs.4,00,000/- and after deducting 15% towards appellant/claimant negligence finally awarded a sum of Rs.3,40,000/- as compensation. Not being satisfied with the said compensation awarded by the Tribunal, the appellant/claimant seeking enhancement of compensation has filed the present appeal before this Court.

6. Heard the learned counsel on either side and also perused the records carefully.

7. The appellant/claimant is a police constable. The accident had taken place in the midnight at 01.20 a.m. Evidence available on record would show that the offending vehicle was parked in the middle of the road without any proper indicator. The Government of India has framed regulations with regard to parking of vehicles known as Road

Regulations, 1989. Regulation 15 of the said Rules, deals with parking of vehicles, which reads as follows:

"15. Parking of the vehicle.-

(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle-

(i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;

(ii) on a foot-path;

(iii) near a traffic light or pedestrian crossing;

(iv) on a main road or one carrying fast traffic;

(v) opposite another parked vehicle or as obstruction to other vehicle;

(vi) along side another parked vehicle;

(vii) on roads or at places or roads where there is a continuous white line with or without a broken line;

(viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;

(ix) on the wrong side of the road;

(x) where parking is prohibited;

(xi) away from the edge of the footpath..."

8. Hence, in violation of the said Rules, the driver parked the vehicle in the middle of the road that to without any indication. In such circumstances, the Tribunal has rightly held that the accident had taken place due to the negligence of the driver of the offending vehicle.

9. That apart, admittedly, at the time of the accident, the appellant/claimant was not wearing a helmet. The appellant/claimant being a Police Constable, he is duty bound to follow the rules. Had he wore the helmet at the time of the accident, he would have avoided the head injury. Hence, due to his negligence, injuries were caused to him. In such circumstances, the Tribunal has rightly fixed 15% negligence on the part of the appellant/claimant and there is no illegality in it.

10. So far as quantum of compensation is concerned, the doctor P.W.2 assessed the disability. A perusal of Ex.P2 discharge summary, it could be seen that the appellant/claimant has suffered the following injuries:

"Severe traumatic brain injury - left fronto temporoparietal acute subdural hematoma, compound depressed fracture of left parietal bone, multiple comminuted fracture involving left frontal, parietal, temporal bones, roof and lateral wall of left orbit, left zygoma and base of sphenoid, diffuse cerebral edema, traumatic cervical spine injury - undisplaced fracture right transverse process C6 and C7, multiple soft tissue injuries and respiratory tract infection."

11. The appellant/claimant has also undergone surgery in Apollo Hospital and he was inpatient for more than one month. In such circumstances, P.W.2 assessed the disability at 45%. But the Tribunal had held that the disability certificate was issued without proper examination and also held that after treatment the appellant/claimant joined service and was discharging his functions without any difficulty and fixed the disability at 15%. Perusal of the medical report and disability certificate, it could be seen that the appellant/claimant suffered severe head injury and also undergone surgery in a private hospital and was inpatient for more than one month. P.W.2 doctor after assessing all these medical reports has certified that the appellant/claimant had suffered disability at 45%. In such circumstances, the Tribunal ought not to have reduced the disability at 15% only on the ground that he rejoined the service and discharging his duties. Hence, this Court is of the view that there is no reason to disbelieve the evidence of the doctor and the disability certificate issued by him. Hence, the disability of the appellant/claimant is fixed at 45% and Rs.3,000/- is fixed for per percentage. Thus, a sum of Rs.1,35,000/- (Rs.3,000 x 45) is awarded towards disability instead of Rs.50,000/- awarded by the Tribunal. Towards pain and sufferings, I am inclined to grant a sum of Rs.1,50,000/- instead of Rs.1,00,000/- awarded by the Tribunal. Further a sum of Rs.1,50,000/- is awarded towards medical expenses instead of Rs.1,25,000/- awarded by the Tribunal. In respect of other heads are concerned, the Tribunal has rightly granted compensation and there is no need to interfere with the same.

12. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Disability	50,000	1,35,000	Enhanced
2.	Pain and sufferings	1,00,000	1,50,000	Enhanced
3.	Extra nourishment	50,000	50,000	Confirmed
4.	Attender charges	50,000	50,000	Confirmed
5.	Transportation	25,000	25,000	Confirmed
6.	Medical expenses	1,25,000	1,50,000	Enhanced
	Total	4,00,000 (LESS 15% negligence is Rs.3,40,000/-)	5,60,000 (LESS 15% negligence is Rs.4,76,000/-)	Enhanced by Rs.1,36,000/-

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.3,40,000/- awarded by the Tribunal is hereby enhanced to Rs.4,76,000/- together with interest at the rate of 7.5 % per annum from the date of claim petition till the date of deposit. 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1420 of 2014, on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

kk

To

1. The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.
2. The Section Officer,
VR Section, High Court, Madras. +2 Copies

+1cc to Mr.K.Poomalai, Advocate SR.No.37582

C.M.A.No.3793 of 2019

GMR (CO)
GMY (29/04/2021)



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