

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2020

Coram:

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

C.M.A.No.3205 of 2017

P.Ravikumar, S/o.Palani ... Appellant/Claimant
Vs.

1.S.Sugumar
2.The Divisional Manager,
New India Assurance Co. Ltd.,
No.30, Jawaharlal Nehru Street,
Pondicherry 605 001. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award made in MACTOP No.1383 of 2003 dated 07.06.2005 passed by the learned Motor Accident Claims Tribunal (Additional Sub Court), Pondicherry in so far as the same denied the claim of compensation to the extent of Rs.5,67,000/- and awarded only a sum of Rs.2,83,000/- out of the total compensation claim of Rs.8,50,000/-.

For Appellant	:	M/s.Sathya Chandran
For R1	:	Exparte before Tribunal
For R2	:	Mr.J.Chandran

J U D G M E N T

Aggrieved against the quantum arrived at by the Tribunal at Rs.2,83,000/-, the claimant / appellant is before this Court. Since the claimant has not challenged the negligence fixed on the second respondent herein, this Court is dealing with quantum alone and not dealing with the negligent aspect, which was fixed based on Exs.P-1-FIR and P-2-M.V.Report and hence the findings on negligence and the liability fixed on the second respondent by the Tribunal are confirmed as such.

2.It is the case of the claimant/appellant that on 24.04.2003 at about 10.15 hours when he was traveling as a pillion rider in his father's TVS Scooty bearing Reg.No.PY-01-R-885, the Ambassador Car bearing Reg.No.PY-01-H-3151 belonging to the first respondent and insured with the second respondent

Insurance Company, came from the opposite direction in a rash and negligent manner, and dashed against the two-wheeler. Due to the said impact, the appellant sustained grievous injury on his right femur. Claiming that the respondents are liable to pay compensation to the claimant/appellant, the claimant was before the Tribunal claiming a sum of Rs.8,50,000/- with interest. The Tribunal has framed the issues, marked the documents (Ex.P1 to Ex.P32) and examined witnesses P.Ws 1 to 3 and ultimately held that the accident had happened only due to the rash and negligent driving of the driver of the Ambassador Car and that the second respondent/insurer is liable to compensate the claimant and has arrived at the quantum of Rs.2,83,000/- with interest at the rate of 9% per annum from the date of petition.

3.The learned counsel for the appellant has submitted that the Tribunal has not properly appreciated the percentage of permanent disability, as assessed by the Doctor at 49% and has awarded only a sum of Rs.49,000/- under this head; that the Tribunal has not awarded any sum towards attendant charges, damage to clothes, future medical expenses, loss of amenities and loss of expectation of life, despite the fact that the claimant took treatment for nearly four months in various hospitals; that the amount awarded towards pain and suffering is too low, considering the nature of injury and period of treatment undergone by the claimant; and in any event the award passed by the Tribunal needs significant enhancement.

4.Per contra, the learned counsel for the second respondent / Insurance company submitted that the accident had happened during the year 2003 and no document whatsoever was produced with regard to the avocation of the claimant; hence, awarding a sum of Rs.2,83,000/- in total during the year 2003 is perfectly valid; in fine, the award of the Tribunal is well reasoned and the same does not require any interference at the hands of this Court.

5.This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

6.A perusal of the award passed by the Tribunal would go to show that the Tribunal has awarded a sum of Rs.2,14,000/- towards medical expenses, by considering Exs.P13 to P25, including Ex.P24 medicine bills (numbering 137). Further, the Tribunal has awarded sums of Rs.10,000/- towards transportation and extra nourishment and Rs.49,000/- for 49% disability by taking Rs.1,000/- per percentage of disability. The aforesaid

sums awarded by the Tribunal are based on the evidence on record and settled principles of law and hence the amounts awarded under those heads are confirmed as such.

7. However, the Tribunal has awarded only a sum of Rs.10,000/- towards pain and sufferings. It is to be noted that the claimant was examined by P.W.3-Doctor R.V.Krishnakumar, who has noted the following disabilities on him:

- i) Grossly malunited comminuted supracondylar fracture (R) femur with Marked patella femur arthrosis (20%) and early leg. arthrosis @ knee
- ii) shortening of (R) thigh by 4 cms. Compared to (L) (8%) (R)-45cms (L) 49 cms.
- iii) Muscle wasting (R) thigh with motor power loss (6%) in quadriceps Hamstrings (G4/5) (R) thigh circumference 42 cms (L) 45 cms.
- iv) Total (R) knee stiffness with (R) knee in ankylosed position at 25° Flexion (15%).

8. Considering the injuries and the disabilities, it would be appropriate to enhance the amount awarded by the Tribunal towards pain and suffering to Rs.50,000/-.

9. It is seen that there was a fracture on the claimant's right femur with displacement and such fracture is grievous in nature. The A.K.PoP slab was implanted in the right thigh of the appellant to fix the broken femur and such implantation was later removed by another surgery. It is also to be noted that because of the condition of the appellant after the accident, he needs assistance to climb stairs, to attend nature's call etc. as he is unable to bend his right knee. In this connection, it would be appropriate to award a sum of Rs.50,000/- towards loss of amenities and Rs.50,000/- towards loss of expectation of life.

10. The Doctor has stated in his evidence that future medical assistance would be required for the appellant, and in spite of the same, the Tribunal has not awarded any sum towards future medical expenses. Hence, this Court is of the view that some amount need to be awarded for his future medical expenses and if a sum of Rs.70,000/- is awarded under that count that would serve the purpose and hence it is awarded accordingly.

11. The claimant had taken treatment for nearly five months and for such treatment, assistance of an attender is a sine qua non and hence a sum of Rs.5,000/- is awarded under this head.

12.In fine, the enhanced / restructured amount of compensation, item wise, would be thus:

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Medical Expenses	2,14,000	2,14,000
Transportation and extra nourishment	10,000	10,000
Attendant charges	-	5,000
Permanent disability	49,000	49,000
Future Medical Expenses	-	70,000
Pain and suffering	10,000	50,000
Loss of amenities	-	50,000
Loss of expectation of life	-	50,000
Total Compensation	2,83,000	4,98,000

Thus, the appellant / claimant is entitled to the modified compensation of Rs.4,98,000/-. It is made clear that only for the compensation of Rs.2,83,000/- awarded by the Tribunal, the interest rate shall be 9% per annum and the same shall be calculated from the date of claim petition. For the enhanced amount of Rs.2,15,000/-, the interest rate will be 7.5% per annum and the same shall be calculated from the date of claim petition. It is also made clear that the appellant/ claimant is not entitled for interest for the compensation amount, in respect of the period of delay in filing this appeal.

13.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srk

To

1.The Additional Subordinate Judge
The Motor Accident Claims Tribunal (Additional Sub Court),
Pondicherry

2.The Section Officer, Vernacular Section, High Court, Madras.

+1 cc to Mr.S.Sathiachandran Advocate sr26079

+1 cc to Mr.J.Chandran Advocate sr26020

C.M.A.No.3205 of 2017

sv(co)
aa07/01/2021