

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.687 of 2017

Selvam

S/o.Ponnusamy

... Appellant/Petitioner

Vs

1.Rajendran

S/o.Kanniyappan

(R1 remained exparte before the Tribunal)

2.Oriental Insurance Co. Ltd.,
Third Party Motor Claims Office,
No.173, J.N.Road,
Thiruvallur - 602 001.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.12.2011 made in M.A.C.T.O.P.No.887 of 2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant : M/s.F.Terry Chellaraja

For Respondents : Mr.N.Sampath for R2
R1 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, seeking enhancement of compensation awarded by the Claims Tribunal.

2.The case in brief, is as follows :

On 20.10.2009, at about 18.00 hrs, one Mathivanan was riding a two wheeler bearing Registration No.TN-63-H-2740, in which, the appellant/claimant and Abdul @ Abdul Majeed were travelling

as pillion riders. When the two wheeler was nearing Nagathammal Koil, Cycle Shop on the GNT Road, Chennai, a lorry bearing Registration No.TN-23-B-1229 came from the same direction in a rash and negligent manner and hit the two wheeler. Due to the said impact, the appellant / claimant along with others sustained grievous injuries. Stating that the accident had occurred due to the rash and negligent driving of the driver of the lorry, the appellant / claimant filed a claim petition, seeking compensation for a sum of Rs.2,00,000/-, as against the first respondent / owner of the lorry and the 2nd respondent/ insurer of the said vehicle. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.61,000/-, with interest at 7.5% per annum from the date of petition. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

3. The learned counsel for the appellant submitted that the Tribunal, without properly considering the oral and documentary evidence, has awarded only a sum of Rs.61,000/- as total compensation, which is on the lower side and hence, the same has to be enhanced substantially.

4. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just, fair and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record carefully and meticulously.

6. This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the aspects of negligence fixed on the driver of the first respondent's vehicle and liability of the insurance company to pay compensation to the appellant / claimant.

7. It is seen from the records that P.W.4 /doctor, who examined the appellant / claimant, assessed the disability at 35% and he issued Ex.P23/disability certificate. However, the

Tribunal has taken only 30% disability and awarded a sum of Rs.30,000/- towards permanent disability, which, in the opinion of this Court, is on the lower side. According to the appellant / claimant, due to the said accident, he sustained fracture of left slab of fibula, for which surgery was done and lacerations all over the body. Taking notice of the injuries sustained, this Court feels it appropriate to take into consideration the entire percentage of disability as assessed by the doctor. Accordingly, the compensation awarded by the Tribunal towards disability is enhanced to Rs.35,000/- by taking 35% disability.

8. Further, considering the nature of the injuries and the percentage of disability sustained by the appellant, this Court is of the considered view that it would be appropriate to enhance the amounts awarded by the Tribunal towards transport expenses, extra nourishment, loss of earning during treatment period and pain and suffering to Rs.3,000/-, Rs.3,000/-, Rs.12,000 (Rs.4,000/- x 3) and Rs.19,000/-, respectively and are accordingly modified. However, the sum of Rs.3,000/- awarded by the Tribunal towards Medical expenses is just and reasonable and hence, the same is confirmed.

9. Thus, the appellant/claimant is entitled to the modified compensation of Rs.75,000/- with interest at the rate of 7.5% per annum from the date of petition, the details of which are as under :

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of earning	9,000/-	12,000/-
Transport expenses	2,000/-	3,000/-
Pain and suffering	15,000/-	19,000/-
Extra nourishment	2,000/-	3,000/-
Medical expenses	3,000/-	3,000/-
Permanent disability	30,000/-	35,000/-
Total	61,000/-	75,000/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent/Insurance Company on behalf of the first respondent, is directed to deposit the modified amount of compensation now determined by this Court along with interest and costs, less the amount if any already

deposited, within a period of four weeks from the date of receipt of a copy of this judgment. It is made clear that the appellant / claimant is not entitled to get interest in respect of the enhanced compensation amount, for the delayed period in filing the appeal. On such deposit being made, the appellant/claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Ponneri.
- 2.The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.687 of 2017

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srg 28/04/2021