

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.795 OF 2014

K.Mohanraj

... Appellant/Petitioner

Vs

1.S.Saravanan

2.M/s.The Oriental Insurance Co. Ltd.,
1st Floor, Gopal Rao Library Building,
Town Hall Road, Kumbakonam.

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed for enhancement of the compensation amount awarded in the Judgment and decree dated 26.09.2012, made in M.C.O.P.No.685 of 2011 on the file of the Motor Accident Claims Tribunal/Additional District Court at Namakkal.

For appellant : Mr.Ma.Pa.Thangavel

For respondent-1 : No Appearance
Exparte before Tribunal

For Respondent-2 : Mr.K.Vinod for
Mrs.Elveera Ravindran

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal/Additional District Court at Namakkal in MCOP No.685 of 2011 dated 26.09.2012.

2. The appellant is the claimant. The first and second respondent are the owner and the insurer of the alleged vehicle involved in the accident.

3. It is the case of the appellant that on 14.07.2011, the appellant/claimant was riding his TVS 50 bearing Registration No.TN 32 Z 9891 by the left side of the road towards Kosavampatty from Namakkal Town near Palace Theater in Namakkal to Thuraiyur Main Road. At that time a Ambassador car bearing Reg.No.TN 49 F 9508 came in the opposite direction in a rash and negligent manner and hit against the two wheeler of the appellant. As a result of which the appellant sustained multiple injuries and compound fractures in his head, hip, both legs, chest and injuries all over the body. Thereafter, the appellant was admitted in Government Hospital, Namakkal for first aid and then he was admitted in M.M.Hospital, Namakkal for better treatment. The accident has occurred due to the negligent driving of the driver of the car. Hence, the appellant has filed a claim petition before the Tribunal against the respondent/Insurance Company, claiming a sum of Rs.10,00,000/- as compensation.

4. Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked ten documents viz., Ex.P1 to Ex.P10. On the side of the respondent, no witness was examined and no evidence was adduced. After analyzing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the car and awarded a sum of Rs.4,50,000/- as compensation.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. The learned counsel for the appellant would submit that the Court below erred in fixing Rs.4,000/- as monthly income of the appellant, which is very low and the Tribunal ought to have awarded Rs.15,000/- per month for calculating the income under the head loss of income. He further pointed out that the Tribunal has not awarded anything towards future prospectus.

7. Per contra, the learned counsel appearing for the second respondent/ Insurance Company submitted that the appellant is the tortfeasor for the accident and further submitted that the rider of the two vehicle does not possess valid driving licence at the time of accident. The injuries sustained by the appellant are all simple in nature. He further contended that the facts stated in the claim petition are false and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the second respondent/Insurance company and also perused the materials available on record before this Court.

9. Before the Tribunal, the appellant examined himself as P.W.1 and deposed that the accident has occurred due to the negligent attitude of the driver of the car. Ex.P1 is the First Information Report, from which it is seen that the driver of the car is the cause for the accident. Considering the above evidence, the Tribunal came to the conclusion that the driver of the car is responsible for the accident and fixed the liability on the part of the insurer of the car/second respondent herein. The findings rendered by the Tribunal are based on evidence and documents produced by the claimant. To controvert the same, no new facts or grounds are forth coming by the respondents. Hence, this Court is not inclined to interfere with the findings rendered on the negligence aspect and the same is confirmed as such.

10. With regard to quantum it is seen that based on Ex.P.2/wound certificate the Tribunal award Rs.33,000/- towards pain and suffering. Taking note of Ex.P.10/Disability certificate, wherein the percentage of disability is fixed as 68% and taking Rs.2,000/- per percentage, the Tribunal has awarded Rs.1,36,000/-(Rs.2,000/-x68%) towards the head disability. Considering Ex.P.7/Medical Bills the Tribunal has awarded Rs.1,93,000/- towards Medical Expenses. Taking note of injuries sustained by the claimant the Tribunal has awarded Rs.13,000/- and Rs.48,000/- towards Injuries and Loss of income. Considering other relevant documents the Tribunal has awarded Rs.2,000/- and Rs.25,000/- towards Transportation and Extra Nourishment. Thus, the total amount of compensation was arrived at Rs.4,50,000/-

11. In view of the above, this Court is inclined to enhance the percentage of disability to Rs.3,000/-, since the accident took place in the year 2011 and enhance the same to Rs.2,04,000/-(Rs.3,000X68%). The amount awarded under the head pain and sufferings is also enhanced to Rs.35,000/- from Rs.33,000/-. The Tribunal has not awarded any amount towards the head loss of amenities hence, Rs.8,000/- is being awarded towards the same and with respect to other heads the award passed by the Tribunal is reasonable and no interference is required and the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Injuries	Rs. 13,000/-	Rs. 13,000/-
Loss of income	Rs. 48,000/-	Rs. 48,000/-
Transport Expenses	Rs. 2,000/-	Rs. 2,000/-
Extra Nourishment	Rs. 25,000/-	Rs. 25,000/-
Medical Bills	Rs.1,93,000/-	Rs.1,93,000/-
Disability	Rs.1,36,000/-	Rs.2,04,000/-
Pain and sufferings	Rs. 33,000/-	Rs. 35,000/-
Loss of Amenities	Nil	Rs. 8,000/-
Total	Rs.4,50,000/-	Rs.5,28,000/-

12.With the above said modification the award amount is enhanced to Rs.5,28,000/- from Rs.4,50,000/-.

13.In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.5,28,000/-with interest at the rate of 7.5% per annum from the date of petition till the date of realization, 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 being made 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 VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Principal subordinate Court, Namakkal.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.4451

+1cc to Mr.Ma.Pa.Thangavel, Advocate, S.R.No.4651

C.M.A.No.795 of 2014

LN(CO)

CS/15/10/2020