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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.540 of 2006

R.Logan

... Appellant/Claimant

..vs..

1.Renuka Devi

2.The United India Insurance Co.Ltd.,
Motor III Party Claims Office,
No.38, Anna Salai, Chennai -2

... Respondents/ Respondents

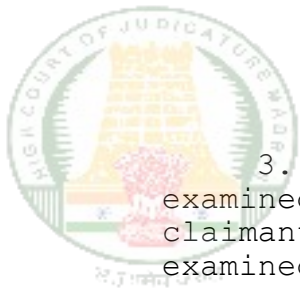
Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.03.2004 made in M.C.O.P.No.86 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court -IV, Poonamallee.

For Appellants	:	M/s. Vaijayanthi
For Respondents	:	Mr.D.Baskaran - R2
		R1 - Refused.

J U D G M E N T

Dissatisfied with the judgment and decree, dated 23.03.2004, passed by the tribunal in awarding compensation of Rs. 42,350/- along with interest at the rate of 9% per annum, the claimant is before this Court for enhancement of compensation.

2. It is the case of the claimant that on 05.01.2003 at about 11.00PM, while the claimant was riding his Motor Cycle bearing Reg.No. TN04-Z-4382 from North to South by the eastern side of the GST Road, Pallavaram, at the time a Car bearing Reg.No. TN09-F-7578 driven by its driver came in a rash and negligent manner at a high speed from the same direction and dashed against the claimant and caused grievous injuries to the claimant. The accident occurred only due to the rash and negligent driving on the part of the driver of the car, hence the claimant has filed a claim petition before the tribunal, claiming compensation of Rs.3,00,000/- against the owner of the vehicle and the insurer of the vehicle. The tribunal has awarded a sum of Rs.42,000/- as compensation, challenging the same, the present appeal is filed for enhancement.



3. Before the Tribunal, witnesses P.W.1 to P.W.3 were examined and Exhibits P1 to P10 were marked on the side of the claimants whereas no documents were marked and no witness were examined on the side of the respondents.

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4. The learned counsel for the appellant submitted that the tribunal failed to appreciate the evidence of PW1 to PW3 regarding injuries and the disablement suffered by the claimant/appellant herein while assessing compensation. The appellant was working as Security and earning a sum of Rs.5,619/- per month. Due to severe head injury and fracture sustained by him, he was unable to do his job as a security and also unable to do his day to day activities. The tribunal without considering the said facts, rejected the claim under the head loss of earning power. The learned counsel for the appellant further submitted that the compensation awarded by the tribunal at Rs.42,350/- is very less and tribunal ought to have awarded compensation under various heads as claimed by the appellant. Hence prayed for enhancement of compensation.

5. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance company submitted that the tribunal after analysing the all the documents, has rightly awarded the compensation to the claimant/appellant herein under the head disability, pain and suffering, transport expenses and medical expenses, which is perfectly valid and does not require any interference by this Court.

6. Heard the learned counsel appearing for the appellant/ claimant and the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. From a perusal of materials, it is seen that the FIR was lodged by the wife of the claimant and the same was marked as Ex.P1 before the tribunal , it has been stated in the FIR that her husband/appellant was returning his home after finishing his duty at 11.00 pm in his Motor Cycle bearing Reg.No. TN04-Z-4382 while he was proceeding near Rajeswari Marriage hall, an Ambassador Car bearing Reg.No. TN09-F-7578 driven by its driver came in a rash and negligent manner at a high speed from the same direction and dashed against the claimant and caused grievous injuries to the claimant. The claimant was examined as PW1, he also deposed the same. It is seen that no contra evidence or materials were placed by the respondents before the tribunal. In the absence of such evidence, the tribunal has observed that the respondents who are the owner and insurer of the vehicle are liable to pay the compensation. This Court finds no error in the observation made by the tribunal, accordingly the liability and the negligence fixed by the tribunal is confirmed.

8. As far as quantum of compensation is concerned, it is seen from the documents two doctors were examined on the side



of the claimants/appellants as PW2 & PW3. PW2/Dr.Saichandran has deposed that due to the said accident, the appellant's left hand was restricted partially and he cannot do heavy work with his left hand, hence assessed the disability at 20%. The disability certificate issued by PW2 was marked as Ex.P8 and the X-ray taken by the said doctor was marked as Ex.P9. Further PW3/Dr.Gopal has assessed the disability at 30% for the head injuries sustained by the claimant/appellant. The disability issued by PW3 was marked as Ex.P10. The tribunal has considered both disability certificates and reduced the disability assessed by PW3 from 30% to 15% and confirms the disability assessed by PW2 at 20% and awarded compensation at Rs.30,000/- (Rs.15,000/- each). This Court cannot accept the reduction of disability made by the tribunal in the absence of any contra evidence. Further, the said disability was assessed by the doctor after perusal on medical records, hence this Court confirms the disability 50% assessed by both PW2 & PW3 and inclined to fix Rs.1,500/- per percentage. Accordingly, the compensation under head 'Partial and Permanent Disability' comes to Rs. 75,000/-.

9. At this stage, the learned counsel for the appellant has submitted that due to the said injury, the appellant was not able to continue his regular work and suffers loss of income, therefore, the compensation for loss of income has to be calculated by adopting multiplier method. On perusal of evidence of the claimant/PW1, he has deposed that after the accident, he is continuing his job and receiving salary. Though the claimant has accepted that he is continuing his job, in view of the injuries and treatment taken by the claimant, it could be presumed that he could have suffered loss of income at least for two months, hence, the compensation under the head 'loss of income during treatment period' is granted at Rs.6000/- by taking Rs.3000/- per month.

10. The other contention raised by the learned counsel for the appellant is that the tribunal has not properly considered the compensation under other heads viz., i. Pain and Suffering, ii. Attendant charges, iii. Extra Nourishment.

11. On perusal of findings of the tribunal, it is true that the tribunal has not properly considered compensation for the aforesaid heads. In view of the injuries sustained by the appellant, he is entitled for compensation under the said heads. Therefore, in interest of justice, it would be proper to award just and fair compensation under the said heads. Thus, the compensation granted by this Court under various heads is as follows;

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Disability	30,000	75000/- (50 x 1500)



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Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Pain and suffering	10,000	15,000
Transport expenses and Extra Nourishment	2,000	...
Extra Nourishment	...	10,000
Attendant charges	...	5,000
Medical Bills	350	350
Loss of income during treatment period	...	6,000/- (3000 x 2)
Total	42,350/-	1,11,350/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at sum of Rs. 42,350/- is enhanced to Rs.1,11,350/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

13. The 1st and 2nd respondents are directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Additional District Judge, Fast Track Court -IV,
(Motor Accident Claims Tribunal),
Poonamallee.

2.The Section Officer,
V.R.Section,High Court, Madras.

CMA.No.540 of 2006

RLD(CO)

A.SK(21.10.2021)

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