

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.667 of 2006

M.Sajit Basha

... Appellant/Claimant

..Vs..

1. B.Rajendran
2. The United India Insurance Co. Ltd.,
Motor III Party Claims office,
No.38, Anna Salai, Chennai-2. ... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 12.03.2004 made in MCOP.No.71 of 2003 on the file of the Motor Accident Claims Tribunal Additional District Judge, Fast Track Court IV, Poonamallee.

For Appellant : Mr.J.Mahalingam
For Respondent No.1 : No appearance
For Respondent No.2 : Mr.D.Bhaskaran

J U D G M E N T

Dissatisfied with the judgment and decree, dated 12.3.2004, passed by the tribunal awarding compensation of Rs.1,27,700/- 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/appellant herein that the appellant herein has met with an accident on 14.05.2000 at about 10.30 p.m., when he was travelling in a TVS motorcycle bearing registration No.TN-05 C 1189 as pillion rider at Perambur high road towards west, the first respondent was riding the said motorcycle in a rash and negligent manner, hit the autorickshaw bearing registration No.TN-09 2755 which came from the opposite direction, resulting in the appellant sustained fracture in the right leg for which surgery was made in K.M.C. Hospital and he had taken treatment from 15.5.2000 to 15.6.2000, 20.11.2000 to 2.12.2000 26.2.2001 to 16.3.2001 and 11.4.2001 to 26.6.2001. The claimant filed a claim petitioner before the tribunal, claiming compensation of Rs.8,00,000/- for permanent disability and loss of earning.

3 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.11, has awarded a sum of Rs.1,27,700/- as total compensation payable by the second respondent/Insurance Company to the claimant under the following heads:

Heads	Amount in Rs.
Compensation for 40% disability (40 x Rs.1000)	40,000/-
Pain and sufferings	80,000/-
Medical bills	2,740/-
Transport & extra nourishment	5,000/-
Total	1,27,740/-
Rounded off	1,27,700/-

4. Heard the learned counsel appearing for the claimant/appellant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

5. According to the learned counsel appearing for the appellant, appellant claimed a sum of Rs.8,00,000/- for permanent disability caused due to the accident. On the appellant side, P.W.1 and P.W.2 were examined and Ex.P1 to P11 were marked to prove that the claimant sustained permanent disability and also income of the claimant. However, the tribunal without appreciating the case of the appellant in proper perspective, awarded a meagre amount to the appellant.

6. According to the learned counsel appearing for the Insurance Company, the Court below rightly fixed the disability of the appellant at 40% and awarded compensation to the claimant/appellant, based on the oral and documentary evidence led by the appellant. Therefore, there is no warrant to interfere with the award passed by the tribunal.

7. Firstly, there is no dispute with regard to liability is concerned. The dispute is only with regard to quantum of compensation awarded by the tribunal. Therefore, insofar as the liability is concerned, the award passed by the tribunal is confirmed. Secondly, the appeal is against the quantum of compensation awarded by the tribunal. Admittedly, the appellant sustained fracture in the right leg for which surgery was made for four times and the appellant had taken treatment in Govt. hospital for five months as inpatient. Dr.Saichandran who deposed before the tribunal as P.W.2, has stated that the appellant sustained grievous injuries at right leg for which surgery was made for four times and issued disability certificate stating that the appellant sustained 45%

disability. Tribunal has reduced the disability to 40% without any basis. There is no rational basis adopted by the tribunal in reducing the disability to 40% and no reason was assigned by the tribunal for reducing 5% disability. P.W.2 Dr.Saichandran who assessed the disability of the appellant at 45% is an expert in the medical field and surgery was made to the appellant for four times and he had taken treatment for five months. Taking note of the nature of injuries sustained by the appellant and his disablement, P.W.2 Doctor assessed that the appellant sustained permanent disability at 45% which is perfectly valid and therefore, on this account, the findings of the tribunal requires modification.

8. Insofar as other heads are concerned, no amount was awarded by the Tribunal towards loss of income. The claimant / appellant placed materials before the tribunal to show that he was not employed during the relevant period. Therefore, it is just and reasonable to fix notional income of the appellant to compensate loss of income for a period of six months, by fixing notional income. The appellant also produced a certificate from the employer that he was working on daily wage basis i.e. Rs.150/- per day. This Court is of the view that it would be reasonable to fix Rs.4,000/- as monthly income of the appellant by taking note of the daily wage employment. On the other heads also, tribunal has not awarded any amount towards attender charges, loss of amenities. For transportation and extra nourishment, the tribunal has not awarded a fair amount to the appellant. To that extent, this Court agree with the contention of the appellant and the compensation awarded by the tribunal is modified on various heads and awarded as follows:

Heads	Compensation awarded by the Tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)	Difference Amount in Rs.
Disability 45% x 1000	40,000/-	45,000/-	5,000/-
Pain and suffering	80,000/-	80,000/-	--
Loss of income 4000 x 6	--	24,000/-	24,000/-
Medical bills	2,740/-	2,740/-	--
Transportation & Extra Nourishment	5,000/-	5,000/- + 10,000/-	10,000/-
Attender charges	--	10,000/-	10,000/-
Loss of amenities	--	15,000/-	15,000/-
Total :	1,27,740/-	1,91,740/-	64,000/-
Rounded off	1,27,700/-	1,91,700/-	64,000/-

The award passed by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

9. The second respondent/Insurance company is directed to deposit the award amount of Rs.1,91,700/- (Rupees one lakh ninety one thousand seven hundred only) after deducting the amount if already deposited before the tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till realization before the tribunal within a period of eight weeks from the date of receipt of copy of the order. On such deposit being made by the respondent Insurance company, the appellant/claimant is permitted to withdraw the said amount by filing appropriate application.

10. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

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

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