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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.04.2021

JUDGMENT PRONOUNCED ON : 30.04.2021
CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO.3196 OF 2009

1.S.Subramanian (died) ... Appellant/Claimant

2.S.Vasanthi

3.S.Karguzhali

4.S.Gunasundari

5.S.Gopalakrishnan

6.S.Rajathiammal

(Appellants 2 to 6 are brought on record as LRs of the deceased sole appellant viz., S.Subramanian, vide order dated 10.01.2020 made in CMP No.25655 of 2019)

.. Appellants

Versus

1.Mrs.Florence Chandran

2.The Manager

United India Insurance Co. Ltd.,
No.38, Anna Salai, III Floor,
Chennai.

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Award and Decree dated 06.07.2005 made in MCOP No.1094 of 2002 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai

For Appellants	:	Mr.A.A.Venkatesan
For Respondent-2	:	M/s.C.Paranthaman
		Exparte before Tribunal

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by the award dated 06.07.2005 made in MCOP No.1094 of 2002 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, the claimants have preferred this appeal seeking enhancement of compensation.



2. On 03.11.2001 at about 17 hours, while the claimant was riding in a motorcycle bearing registration No.TN-09-R-9686 from South to North direction along the East Coast Road, a Maruthi car bearing registration No.TN-02-F-1845 came in the same direction in a rash and negligent manner dashed against the petitioner and thereby the petitioner was thrown out and sustained grievous injuries and hence, the claimant claimed a sum of Rs.8,50,000/-.

3. The claim petition filed by the claimant was resisted by the second respondent/Insurance Company disputing the involvement of the vehicle, the manner of the accident and the injuries sustained by the claimant and also disputed the quantum of compensation sought by the claimant.

4. In order to prove the claim, on the side of the claimant, the claimant was examined as PW.1 and Dr.Thiyagarajan was examined as PW.2. Exs.P1 to P13 were marked on the claimant's side. On the side of Insurance Company, no oral and documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the car and passed an award for a sum of Rs.3,33,300/-. Taking into consideration the loss of income of Rs.45,000/-

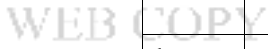
Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Loss of income	Rs. 45,000/-
2	Transport	Rs. 4,000/-
3	Extra nourishment	Rs. 4,000/-
4	Damages to cloth and articles	Rs. 300/-
5	Medical expenses	Rs. 65,000/-
6	Attendant charges	Rs. 25,000/-
8	Mental Agony	Rs. 5,000/-
9	Loss amenities	Rs. 5,000/-
10	Pain and Suffering	Rs. 50,000/-
11	Partial permanent disability	Rs. 80,000/-
12	Loss of earning capacity	Rs. 50,000/-
	Total	Rs.3,33,300/-



6. Learned counsel for the appellant would submit that the compensation awarded by the Tribunal is very meagre and the Tribunal, considering the nature of injuries sustained by the claimant ought to have taken Rs.2,000/- per disability. It is also contended that the claimant underwent surgery for three times, which was not considered by the Tribunal and the amount awarded by the Tribunal under various heads are very meagre and that has to be enhanced.

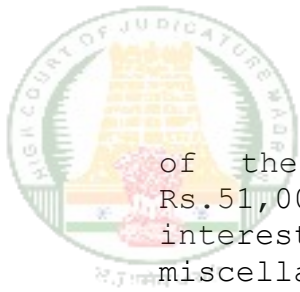
7. Per contra, learned counsel for the respondent would submit that the accident took place during the year 2001 and the Tribunal after considering the nature of injuries and treatment taken by the claimant, awarded a correct compensation.

8. Admittedly, the claimant sustained head injury and skull fracture, fracture of head of left femur, fracture of left acetabulum, fracture of right scapula and multiple injuries all over the body. The claimant underwent treatment as inpatient in Government Hospital from 03.11.2001 to 10.12.2001. Further the claimant was again admitted on 12.12.2001 and discharged on 23.12.2001. The claimant was admitted as inpatient for the third time from 15.01.2002 to 30.01.2002. Considering the nature of injuries sustained by the claimant, this Court is of the opinion that Rs.1,500/- per disability would be just and fair and the award has to be enhanced to that extent. The Tribunal has awarded Rs.4,000/- for transportation and that has to be enhanced to Rs.5,000/-. The Tribunal has awarded Rs.4,000/- for extra-nourishment, though the claimant has claimed Rs.5,000/- and that can be enhanced to Rs.5,000/-. This Court is of the view that the compensation awarded under the head 'mental agony', and 'damages to clothes and articles' are meagre and the same have to be enhanced and accordingly, this Court award a sum of Rs.10,000/- towards 'mental agony' and Rs.1,000/- towards 'damages to clothes and articles'. For loss of amenities, the claimant claimed a sum of Rs.25,000/-, but the Tribunal awarded Rs.5,000/-, that can be enhanced to Rs.10,000/-, which is reasonable one. Though the claimant claimed Rs.50,000/- for future medical expenses, the Tribunal declined the same, by considering the continuous treatment taken by the claimant in the Government Hospital. Obviously the claimant need not to have take treatment in the Government Hospital compulsorily and it would be just and proper to award Rs.25,000/- for future medical expenses. The loss of income arrived by the Tribunal considering the fact that the claimant would not have attended the work for few months apart from the period as inpatient is just and reasonable. The Tribunal has rightly awarded a sum of Rs.50,000/- towards loss of earning capacity. Accordingly, the compensation



Sl.N o	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)	Amount now awarded by this Court (in Rs.)
1	Loss of income	Rs. 45,000/-	Rs. 45,000/-
2	Transport	Rs. 4,000/-	Rs. 5,000/-
3	Extra nourishment	Rs. 4,000/-	Rs. 5,000/-
4	Damages to cloth and articles	Rs. 300/-	Rs. 1,000/-
5	Medical expenses	Rs. 65,000/-	Rs. 65,000/-
6	Attendant charges	Rs. 25,000/-	Rs. 25,000/-
8	Mental Agony	Rs. 5,000/-	Rs. 10,000/-
9	Loss amenities	Rs. 5,000/-	Rs. 10,000/-
10	Pain and Suffering	Rs. 50,000/-	Rs. 50,000/-
11	Partial permanent disability	Rs. 80,000/-	Rs.1,20,000/-
12	Loss of earning capacity	Rs. 50,000/-	Rs. 50,000/-
13	Future Medical Expenses		Rs. 25,000/-
	Total	Rs.3,33,300/-	Rs.4,11,000/-

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of the deceased is entitled to the remaining amount of Rs.51,000/- (Rupees fifty one thousand only) with proportionate interest. No costs in this CMA. Consequently, connected miscellaneous petition is closed.

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10. The second respondent/Insurance Company is directed to deposit the entire award amount together with interest at 9% p.a. for the award by the Tribunal and 7.5% p.a. for the enhanced compensation as assessed by this Court, less the amount, if any, already deposited to the credit of M.C.O.P. No.1094 of 2002, Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants 2 to 6, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellants before receiving the copy of this Judgment.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Judge
Motor Accident Claims Tribunal
Court of Small Causes at Chennai.
2. The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No.26713
+1cc to M/s.C.Paranthaman, Advocate, S.R.No.26601

CMA.No.3196 of 2009

RSV(CO)
CS/29/11/2021