



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA. No.1021 of 2012

S.Krishnan

... Appellant/Claimant

..vs..

1.V.Krishnasamy

2.United India Insurance Co.Ltd.,
T.K.M.Complex, Divisional Office,
Vellore.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2006 made in M.C.O.P.No.139 of 2004, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellants : Mr.R.Ramesh

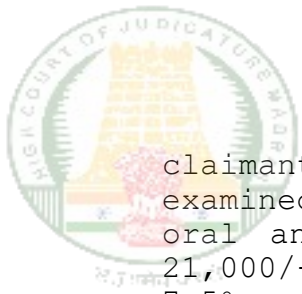
For Respondent : Mr.P.Sankaranarayanan for R2
R1-Notice unserved

J U D G M E N T

Dissatisfied with the judgment and decree, dated 31.07.2006, passed by the tribunal in awarding compensation of Rs. 21,000/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.

2. It is the case of the claimant that on 24.05.2003 at about 11.00AM, the claimant while proceeding in his Motor Cycle bearing Reg.No. TN-23-X-3551 at Malladi Drugs Junction Road, Sipcot, at the time, rider of the TVS Suzuki Bike bearing Reg.No. TN25-X-9227 came in a rash and negligent manner and hit against the claimant. Due to the impact, the claimant/appellant herein sustained fracture in his right leg. Hence the claimant filed claim petition, claiming compensation of Rs.6,00,000/- against the owner and insurer of the vehicle. The tribunal has awarded a sum of Rs.21,000/- as compensation, challenging the same, the present appeal is filed for enhancement.

3. Before the Tribunal, witnesses P.W.1 & P.W.2 were examined and Exhibits P1 to P14 were marked on the side of the



WEB COPY

claimants whereas no documents were marked and no witness were examined on the side of the respondents. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs. 21,000/- as compensation along with interest at the rate of 7.5% p.a.

4. The learned counsel for the appellant submitted that the appellant has sustained grievous injuries and fracture in his left leg and also undergone surgery. The doctor/PW2 assessed the disability at 50%, but the tribunal has not considered the said disability and not awarded any amount towards disability. The learned counsel for the appellant further submitted that the tribunal has also not considered Ex.P6 & P8 consisting medical bills and not awarded any amount towards medical expenses. The tribunal has rejected the claim made by the tribunal under various heads and awarded very meagre of amount of Rs.21,000/- as compensation, which according to the petitioner is highly improper and requires enhancement.

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, which 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 marked as Ex.P1, it has been stated that when the claimant was going to Ranipet in his bike at Malladi Junction Road, at the time, a TVS Suzuki bike Reg.No.TN25-X-9227 came in a rash and negligent manner from the opposite side and dashed against the claimant and he sustained injure. No contra evidence has been placed by the respondents to dis-believe the statement made in the FIR. As such, it was decided by the tribunal that the accident had occurred only due to rash and negligent riding of the rider of the Motor Cycle bearing Reg.No.TN25-X-9227. Ex.P12 is the copy of the Insurance Certificate issued by the insurance company, which clearly shows that the alleged vehicle is insured with the 2nd respondent/insurance company and 1st respondent is the owner of the said vehicle. Hence, the 1st and 2nd respondents being owner and insurer of vehicle are liable to pay the compensation. The tribunal has rightly observed the said facts and directed to pay the compensation both the respondents jointly and severally. This Court also confirms the negligence and liability fixed by the tribunal.



8. As far as quantum of compensation is concerned, it is seen that the Dr.Riyaz Ahamed was examined as PW2, he deposed that the appellant/claimant has sustained 50% disability due to the said accident, Ex.P14 is the disability certificate issued by the said doctor. Since the injuries and the treatment taken by the appellant was proved through Ex.P2/Discharge summary, Ex.P8/Bills and Ex.P14 /Disability certificate, the reason stated by the tribunal that the evidence of PW2 is not reliable cannot be accepted. Hence, this court accepts the disability assessed by the doctor and inclined grant compensation by fixing Rs.1000/- per percentage. Accordingly, a sum of Rs.50,000/- (1000 x 50) is granted under the head 'Disability'. Though it is stated in the claim petition that the claimant was running a leather factory at Sipcot and earned Rs.15,000/-, by considering the year of the accident, this Court is inclined to fix monthly income at Rs.3,000/- , for loss of income for two months, a sum of Rs.6000/- is granted under the head 'Loss of income during treatment period'.

9. The tribunal has not considered the Exs.P6 & P8/ Medical Bills marked by the appellant in support of his treatment, hence by considering the above documents, a sum of Rs.96,000/- is granted towards Medical Bills. This Court confirms compensation granted under the head 'Pain and Suffering' at Rs.20,000/- and the sum of Rs.1,000/- awarded under the head 'extra nourishment is enhanced from Rs.1,000/- to Rs 5,000/-. In view of the injuries sustained by the claimant, this Court is of the view that, it would be proper to grant compensation under the head 'Attendant Charges' and 'Transport Expenses'. Accordingly, a sum of Rs. 5,000/- and Rs.10,000/- is granted respectively under the said heads. Thus, the compensation granted by the tribunal is modified by this Court under various head as follows;

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Disability		50,000/- (1000 x 50)
Pain and suffering	20,000/-	20,000/-
Extra Nourishment	1,000/-	5,000/-
Loss of income during treatment period	...	6,000/- (3000 x 2)
Attendant charges	...	5,000/-
Medical Bills	..	96,000/-



WEB COPY

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Transport Expenses	...	10,000/-
Total	21,000/-	1,92,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal at sum of Rs. 21,000/- is enhanced to Rs.1,92,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

11. 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. The apportionment shall be as fixed by the tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ak
To

1. The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal)
Vellore. .

2.The Section Officer, V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.R.Ramesh, Advocate Sr.8865
+1cc to Mr.P.Sankaranarayanan, Advocate Sr.8620

C.M.A No.1021 of 2012

rld[col]
srg 20/07/2021