

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.2369 of 2011

V.Nandakumar

.. Appellant/Petitioner

Vs.

1.C.Shankar

2. The New India Assurance Company Ltd.,
No.46, Moore Street,
Chennai -600006.

.. Respondents/Respondents

(First Respondent set exparte in the
lower court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2005, made in M.C.O.P. No. 115 of 2001, on the file of the Additional District and Sessions Judge (FTC-III), Chennai.

For Appellant : Mr. K.R.Ponnusamy for
M/s.Anand and Suryas

For Respondents: Mr.Michael Viswasam - R2
R1-Notice unserved

J U D G M E N T

The matter is heard through "Physical Hearing".

This Civil Miscellaneous Appeal has been filed by the claimant against the judgment and decree dated 06.01.2005, made in M.C.O.P. No. 115 of 2001, on the file of the Additional District Judge(FTC-II), Chennai

2. Brief facts of the case is that on 10.06.2000 at 22.30 hrs when the petitioner was riding his two wheeler bearing Reg.No. TSK-7289 on north Usman Road, at that time a two wheeler bearing Reg.No. TMR-98 came from the opposite direction, ridden by its rider in a rash and negligent manner, endangering to the public safety, and hit against the claimant's vehicle. As a result of which, the claimant was thrown out of his vehicle and sustained grievous and multiple injuries all over the body.

Hence, he filed a claim petition before the tribunal claiming compensation for Rs.2,25,000/- for the injuries and disabilities sustained by him due to the said accident. The tribunal after considering the oral and documentary evidence, has fixed the negligence on the part of the rider of the two wheeler bearing Reg. No.Reg.No. TMR-98 /1st respondent herein and directed to pay a sum of Rs.1,60,732/- as compensation by the 1st and 2nd respondents jointly and severally. Being not satisfied with the said award passed by the tribunal, the claimant has preferred the present appeal for enhancement of compensation.

3. The learned counsel appearing for the appellant/claimant submitted that the claimant/appellant was pursuing his second year degree course, he would have finished his studies and earned a sum of Rs.3,000/- per month. Because of the accident, he could not complete his degree. The learned counsel for the appellant further submitted that the tribunal grossly erred awarding a meagre amount of Rs.60,000/- towards disability without adopting multiplier method. The evidence of PW2/Dr.Saichandran and Ex.P13/Disability. The learned counsel for the appellant further submitted that the tribunal without following the principles laid down by the Hon'ble Supreme Court and this Court has granted very less compensation towards pain and suffering, transport expenses and extra nourishment Hence prayed for enhancement of compensation.

4. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the tribunal upon considering the materials available on record, has granted compensation to the claimant for the injuries sustained by him. The compensation awarded by the tribunal is reasonable and does not require any enhancement as sought for by the appellant. Hence the appeal is liable to be dismissed.

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

6. Before the tribunal, the appellant/claimant was examined as PW1 and the doctor who examined the appellant was examined PW2 and marked 14 documents Ex.P1 to P14. On the side of the respondents no witnesses were examined and no documents were marked.

7. From a perusal of records, it is seen that Dr.Saichandran was examined as PW2 before the tribunal and he assessed the disability at 50%. He deposed before the tribunal that due to the fracture in the right leg, the claimant had undergone surgery and iron rods were fixed in his leg and due to the said surgery, his movement in the right side hip has been

reduced to 30 degree. Based on the x-ray/Ex.P8 and other medical documents he assessed the disability at 50% to the claimant. It is seen from the award, the tribunal has not considered the disability assessed by the doctor and awarded Rs.60,000/- under the head 'Disability'. The tribunal has not stated any reason for not considering the disability assessed by the doctor and the respondents also not placed any documents to disprove the disability assessed by the doctor. In the absence of any materials to disprove the disability, it would not be proper to deny the compensation for the actual disability sustained by the claimant. Though the learned counsel for the appellant/claimant strongly contended for grant of compensation by adopting multiplier method, this Court is inclined to grant compensation for the disability by fixing some reasonable amount per percentage. The Hon'ble Supreme Court and this Court, in recent judgments has categorically held that the a sum of rupees between Rs.2000/- and Rs.5000/- can be taken per percentage depending upon the facts of the case. In the present case on hand, the injured claimant was pursuing his second year degree course and due to injuries and disability he was not able to do his regular work as before. Further, considering the age of appellant, who was 22 years at the time of the accident, he could have earn Rs.3000/- per month after successful completion of his degree. Therefore, this Court is of the opinion that the compensation towards Disability can be granted by fixing Rs.3000/- per percentage, hence for the 50% disability, the compensation comes to Rs.1,50,000/- (Rs.3000 x 50).

8. Further, in view of nature of injuries and disability sustained by the appellant, the compensation granted by the tribunal under the heads 'Pain and Suffering, Extra Nourishment and Transport Expenses are needs to be enhanced. As per Exhibits P5 & P6 the tribunal has granted compensation for 'Medical Expenses' at Rs. 53,232/-, this Court confirms the said amount. The tribunal has not granted any amount for 'Attendant Charges' and 'Loss of Amenity', this Court grants a sum of Rs.10,000/- and 25,000/- respectively under the said heads. In the absence of any materials to prove the income of the deceased and in view of enhancement under the head 'Disability' the compensation granted by the tribunal towards 'Loss of earning capacity' is set aside. Thus, the compensation awarded by the tribunal is modified by this Court as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Disability	60,000/-	1,50,000/- (3000 x 50)

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Pain and Suffering	10,000/-	25,000
Transportation	3000/-	5,000/-
Extra Nourishment	4000/-	10,000/-
Medical Expenses	53,232/-	53,232/-
Damage to cloths	500/-	500
Loss of Amenity	...	25,000/-
Attendant Charges	..	10,000/-
Loss of earning capacity	30,000	...
Total	1,60,732/-	2,78,732/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs. 1,60,732/- awarded by the tribunal is enhanced to Rs.2,78,732/-. The rate of interest for the enhanced compensation amount is fixed by this Court at 7.5% per annum from the date of petition till the date of deposit. The learned counsel for the appellant is directed to pay the court fee for the enhanced compensation. This Court makes it clear that the revised rate of interest at 7.5% per annum is only for the enhanced compensation amount.

10. The 1st and 2nd respondents are directed to deposit the entire compensation amount along with interest as modified by this Court jointly and severally, 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-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge (FTC-III),
Chennai.

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

+1cc to M/s. Anand and Suryas, Advocate, S.R.No.15326

+1cc to Mr. J. Michael Visuvasam, Advocate, S.R.No.14668

C.M.A. No.2369 of 2011

BR(CO)

CB(31/08/2021)