



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

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CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

C.M.A.No.1815 of 2013

V.Venkatesh

...Appellant / Petitioner

Vs.

1.M/s. Octopus Marine Engineering Works,
No.104/2, East Mada Church Street,
Royapuram, Chennai - 13.

2.The United India Insurance Co. Ltd.,
No.134, Greems Road, Silingai Building,
HUB, IV Floor, Chennai - 6. ...Respondents / Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in the above MCOP.No.4281 of 2003 dated 21.11.2008, on the file of the Additional District Judge, Fast Track Court - I, Chennai / Motor Accident Claims Tribunal, Chennai, in so far as the same is against the claim of the appellant and award full and just compensation.

For Appellant : Mr. K.R.Ponnusamy

For Respondents : Mr. D.Bhaskaran, for R2
R1- Notice unserved

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award passed in the above MCOP.No.4281 of 2003 dated 21.11.2008, on the file of the Additional District Judge, Fast Track Court No.I, Chennai / Motor Accident Claims Tribunal, Chennai.

2. It is the case of the appellant/claimant that on 03.05.2003 at about 7.30 p.m., the petitioner was riding his two



wheeler bearing Registration No.TN-04-Z-4205 on Apparsamy Koil Street Junction at Ennore Express Road. At that time, a Lorry bearing Registration No.TN- 04-D-3655, owned by the first respondent and insured with the second respondent, came in a rash and negligent manner on the same Road in opposite direction and hit the petitioner's vehicle. Due to the accident, the appellant/claimant sustained multiple injuries. It is the further case of the appellant/claimant that he was working as Auto Driver and earning a sum of Rs.150/- per day. Hence, he made a claim for a sum of Rs.1,50,000/- as compensation.

3. Before the Tribunal, to prove the case of the appellant/ claimant, he examined himself as PW1 besides examining 2 other witnesses as PW2 & PW3 and Exs.P1 to P8 were marked. On the side of the Insurance Company, none were examined and no exhibits were marked.

4. On appreciation of evidences, the Tribunal found that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's Lorry and the second respondent/Insurance Company being the insurer of the said vehicle, is liable to pay compensation. Accordingly, the Tribunal had awarded a sum of Rs.49,000/- as compensation with 9% interest p.a. from the date of petition till the date of realisation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

Heads	Amount awarded by the Tribunal
Permanent disability (20%)	Rs.40,000/- (2000 x 20)
Conveyance expenses	Rs.2,000/-
Extra Nourishment	Rs.2,000/-
Pain and sufferings	Rs.5,000/-
Total	Rs.49,000/-

As against the said award, the claimant has filed the present appeal.

5. The learned counsel for the appellant/claimant submitted that due to the accident, the appellant sustained



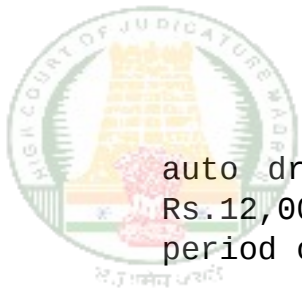
grievous injuries, namely, fracture left zygoma, injury right forearm & left mandible and he was treated as in-patient for 10 days in Hospital. He further submitted that the Tribunal has not considered the evidence of PW2, Dr.Kalkura, who deposed before the Tribunal that the appellant had sustained 35% permanent disability due to the accident. However, the Tribunal without any basis had reduced the permanent disability to 20%. Hence, the percentage of disability assessed by the Doctor at 35% needs to be retained. He would also submit that the amounts awarded by the Tribunal under other heads are also very meager. Further, no amounts were awarded under the heads Loss of Income, Attender Charges and Loss of Amenities. Hence, he prayed to award amounts under the above heads and enhance the compensation amount.

6. The learned counsel appearing for the second respondent/ Insurance Company would submit that the Tribunal by appreciating the oral and documentary evidence, has rightly fixed 20% disability. Thereafter, by awarding a sum of Rs.2,000/- per percentage of disability, has awarded a sum of Rs.40,000/- under the head "Permanent Partial Disability", which is fair and reasonable. As far as the other heads concerned, the Tribunal has rightly fixed the compensation. Therefore, the appeal is liable to be dismissed.

7. This Court considered the rival submissions of both the parties and perused the materials available on record.

8. PW2, the Doctor who gave treatment to the appellant, in his evidence had stated that the appellant/claimant had suffered permanent disability at 35% due to the accident and the disability certificate issued by him was marked as Ex.P5. But, the Tribunal, without any basis, has fixed the permanent disability at 20%. The said assessment of the Tribunal is without any documentary evidence. Therefore, this Court accepts the assessment made by PW2 Doctor and fixes the percentage of permanent disability at 35%. Thus, by awarding Rs.1,500/- per percentage of disability, this Court awards Rs.52,500/- (1500 x 35%) under the head "permanent disability",.

9. As far as "Loss of Income" is concerned, the Tribunal has not awarded any amount. The appellant / claimant was admitted in the Hospital as an in-patient from 03.05.2003 to 12.05.2003 and at the time of the accident, the claimant was an



auto driver and earning Rs.150/- per day. Hence, a sum of Rs.12,000/- is awarded under the head "Loss of Income for a period of three months" [4000 x 3].

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10. Considering the grievous injuries sustained by the appellant/claimant, this Court finds that the sum of Rs.5,000/- awarded by the Tribunal towards "Pain and Sufferings" appears to be on the lower side, and hence, the same is enhanced to Rs.15,000/-.

11. Further, considering the treatment given to the appellant / claimant, this Court finds that the sum of Rs.2,000/- awarded towards "Extra Nourishment" appears to be on the lower side and hence, the same is hereby enhanced to Rs.5,000/-

12. This Court finds that though long duration of treatment underwent by the appellant/claimant, no amount was awarded under the head "Attender Charges" and hence, a sum of Rs.5,000/- is awarded under such head.

13. Similarly, no amount was awarded under the head "Loss of Amenities" and hence a sum of Rs.5,000/- is awarded under such head.

14. The sum of Rs.2,000/- awarded by the Tribunal under the head "Conveyance Expenses" is just and fair, and hence, the same is hereby confirmed.

15. Accordingly, modified compensation payable would be:

Heads	Amount awarded by the Tribunal	Enhanced compensation
Permanent Disability	Permanent Disability (20%) (2000 x 20) Rs.40,000/-	Permanent Disability (35%) (1500 x 35) Rs.52,500/-
Loss of Income	-	Rs.12,000/- (Rs.4,000 x 3)
Conveyance Expenses	Rs.2,000/-	Rs.2,000/-
Extra Nourishment	Rs.2,000/-	Rs.5,000/-



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Heads	Amount awarded by the Tribunal	Enhanced compensation
Attender Charges	-	Rs.5,000/-
Pain and Sufferings	Rs.5,000/-	Rs.15,000/-
Loss of Amenities	-	Rs.5,000/-
Total	Rs.49,000/-	Rs.96,500/-

16. It is the contention of the learned counsel for the Insurance Company that the Tribunal has fixed higher rate of interest at 9% p.a. for the compensation amount. The said contention of the learned counsel for the Insurance Company has some force. Hence, the enhanced compensation amount shall carry interest only at the rate of 7.5% p.a. and the compensation awarded by the Tribunal shall carry interest at 9% p.a. from the date of claim petition till the date of deposit.

17. Thus, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount from Rs.49,000/- to Rs.96,500/- (Rupees Ninety Six Thousand and Five Hundred Only). The enhanced compensation amount of Rs.47,500/- shall carry interest only at the rate of 7.5% per annum and the compensation awarded by the Tribunal, i.e., Rs.49,000/- shall carry interest at 9% per annum from the date of claim petition till the date of deposit. The second respondent/ Insurance Company is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant is permitted to withdraw the award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. The appellant/claimant is directed to pay necessary court fee, if any, on the enhanced compensation amount. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To
The Additional District Judge,
Fast Track Court - I, Chennai /
Motor Accident Claims Tribunal, Chennai.

+1cc to M/s.Anand and Suryas, Advocate SR.No.7651

C.M.A.No.1815 of 2013

SPD(CO)
RVM(16/09/2021)