



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2898 of 2012

M. Arun Kumar

.. Appellant/ Claimant

Vs.

1. M. Saravanan

2. The ICICI Lombard General Insurance

Co. Ltd., Chennai.

... Respondents/ respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 03.08.2012 passed in M.C.O.P.No.339 of 2009 by the Subordinate Judge, Motor Accident Claims Tribunal, Harur.

For Appellant : Mr. M. Selvam

For respondent : Mrs. R.Sreevidhya (for R2)
Notice unserved to R1

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court for enhancement of compensation.

2. The appellant/claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 20.02.2009.

3. The brief case of the claimant is as follows: On 20.02.2009, the claimant was travelling as a pillion rider in a motorcycle bearing registration No.TN-07-AV-6625, riding by the first respondent along Thiruvannamalai-Dhindivanam Main road and while nearing Navakarai, the first respondent rode the motorcycle rashly and negligently and on seeing the dog, has applied sudden break, thereby, the motorcycle capsized and the claimant and the first respondent sustained multiple injuries all over their body. According to the claimant, the rash and



negligent riding of the first defendant was the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

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4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr. Krishnakumar were examined as PW1 and PW2 and Ex.P1 to Ex.P11 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,88,500/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of future earning (4000 x 12x14% x 18)	1,21,000
2	Pain and sufferings	20000
3	Medical bills	40000
3	Extra nourishment	5000
4	Transportation charges	2,500
	Total	1,88,500

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

8. Heard the learned counsel for the appellant and the learned counsel for the insurance company and I have perused the materials on record.

9. The learned counsel appearing for the appellant/ claimant submitted that the claimant had sustained compound fracture of right tibia and also sustained grievous injuries and the doctor has assessed the disability suffered by the Tribunal as 40%, however, without any basis, the tribunal has fixed the disability at 14%, which is unsustainable. He further submitted that no amount was awarded towards " Loss of amenities" and the compensation awarded under the other heads also very meagre and hence, he prayed to enhance the compensation.

10. The learned counsel appearing for the second respondent/ insurance company submitted after analysing the evidence and the documents on record, the Tribunal has rightly



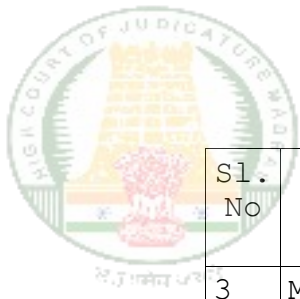
fixed the disability suffered by the claimant at 14% . He further submitted that as per the decision rendered by the Honourable Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2011(1) SCC 343 the claimant has to establish that due to the disability, his future earning capacity was permanently affected, however, no material was placed before the Tribunal to prove the same and that there is no discussion in the Award for adopting multiplier method. Therefore he submitted that the findings of the Tribunal does not warrant any interference by this court.

11. Now the point for consideration is Whether the compensation awarded by the Tribunal has to be enhanced.

12. Point

The claimant has produced the disability certificate Ex.P9, wherein, the doctor has assessed the disability suffered by the claimant as 40%. To support the above said document, the doctor was examined as PW2 and deposed about the disability of the claimant. However, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has fixed the disability at 14%, without any basis. Hence, as per the evidence of PW2 and the Ex.P9, it is appropriate for this court to fix disability suffered by the claimant as 40%. Further, the claimant has stated in the claim petition that his monthly income was Rs.3,000/- and the same is fixed as monthly income of the claimant. As rightly pointed out by the learned counsel appearing for the insurance company, there is no material placed before the Tribunal for adopting multiplier method, as per the decision of the Honourable Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2011(1) SCC 343. Therefore, for the disability suffered by the claimant, a sum of Rs.1,20,000/- (3000 x 40) is awarded. Further, no amount was awarded towards " Loss of amenities", "Loss of income during the treatment period " and " Damages to cloths" Accordingly, a sum of Rs.10,000/-, Rs.9,000/- and Rs.1,000/- is awarded respectively for the above said heads. As far as the compensation awarded under the head " Transportation charges", it is enhanced to Rs.5,000/- from Rs.2,500/-. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of future earning	1,21,000 (4000 x 12x14% x 18)	1,20,000 (40x3000)
2	Pain and sufferings	20,000	20,000



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
3	Medical bills	40,000	40,000
4	Extra nourishment	5,000	5,000
5	Transportation charges	2,500	5,000
6	Loss of amenities	-	10,000
7	Loss of income during the treatment period	-	9,000
8	Damages to cloth	-	1,000
	Total	1,88,500	2,10,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,88,500/- to Rs.2,10,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.2,10,00/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Subordinate Judge,
Motor Accident claims Tribunal, Harur.

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



+1cc to Mr.M.Selvam, Advocate, S.R.No.15258

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.15523

CMA. No.2898 of 2012

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LN (CO)

CB (01/09/2021)