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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.No.392 of 2015

Bhuvanendran

... Appellant/Claimant

Vs.

1. Ramajeyam
2. The Divisional Manager,
National Insurance Company Limited,
No.19, Officers Line,
Vellore.

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.09.2013, made in M.A.C.T.O.P.No. 327 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

For Appellant : Mr.Terry Chellaraja

For R1 : Exparte before the Tribunal

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.327 of 2005, on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruvannamalai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 13.10.2004.

2. The brief case of the appellant/claimant is as follows:

(i) The appellant/claimant was aged 25 years on the date of the accident. He was working as a T.V.Mechanic, earning a sum of Rs.4,000/- per month.



(ii) On 13.10.2004 at about 10.30 pm., at Oosambadi Koottu Road in Vellore-Tiruvannamalai main road when the petitioner was riding in his motor cycle., the lorry bearing Registration No.TDL 8476 belonging to the 1st respondents was driven in high speed in rash and negligent manner dashed against the appellant/claimant. As a result, he was thrown out and sustained multiple grievous injuries all over the body. He was taken to Government Hospital as in-patient and thereafter he was treated in Royapettah Hospital, Chennai from 13.10.2004 to 13.11.2004. Due to the said accident, the appellant/claimant frequent headaches and dizziness due to severe bruising on the right side of the forehead and severe bruising on the upper lip due to the accident and inability to properly chew food. He said that he was suffering from severe pain due to tooth decay and was being treated in hospital due to permanent disability. He also said that he was unable to continue his T.V mechanic career and his income was completely cut off.

3. The owner of the motorcycle bearing Registration No. TDL 8476, has not appeared to defend his case before the Tribunal, and therefore, he was set ex-parte. The National Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and P.W.2 were examined and Exhibits.P1 to P8 were marked. On the side of the respondents, no oral evidence and documents were marked.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.95,000/- together with interest at the rate of 7.5% per annum. The second respondent has to make a deposit of Rs.95,000/- as total compensation to the petitioner within a period of two months. It is also ordered to deposit the above amount along with 7.5% interest and proportional expenditure per annum from 31.12.2004 onwards till the date of collection of the full amount. It is also ordered to deposit the entire amount of compensation deposited in the name of the petitioner in a Nationalized Bank for a period of 3 years. The petitioner is ordered to repay the excess Court stamp duty paid by the petitioner in Court. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. After hearing both the parties and perusing the materials available on records, it is seen that the rash and negligence fixed on the part of the rider of the said motorcycle is not in dispute and the same is hereby confirmed.

6. The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant has suffered the frequent headaches and



dizziness due to severe bruising on the right side of the forehead and severe bruising on the upper lip due to the accident and inability to properly chew food. He said that he was suffering from severe pain due to tooth decay and was being treated in hospital due to permanent disability. He also said that he was unable to continue his T.V mechanic career and his income was completely cut off. He would contend that the appellant/claimant was admitted as an inpatient in Government Hospital and thereafter he was treated in Royapettah Hospital, Chennai as in-patient from 13.10.2004 to 13.05.2005. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

7. The learned counsel appearing for the second respondent/National Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable and they need not be disturbed, at this juncture.

8. Admittedly, the injured was 25 years old at the time of the accident, dated 13.10.2004 and he was earning Rs.4,000/- per mensem as per the documentary evidence placed before the Tribunal. In the accident, he has suffered frequent headaches and dizziness due to severe bruising on the right side of the forehead and severe bruising on the upper lip due to the accident and inability to properly chew food. He said that he was suffering from severe pain due to tooth decay and was being treated in hospital due to permanent disability and all over the body.

9. After hearing both sides and taking note of the fact that Exhibit P8 Disability Certificate and also the evidence of the Doctor P.W.2 Ravindran, the "disability" has been fixed at 35% and accordingly Rs.70,000/- (Rs.2,000/-x35%) has been awarded before the Tribunal and the same is hereby confirmed.

10. Taking into consideration of period of treatment as in-patient in hospital and in the interest of justice, Rs.10,000/- is hereby awarded for 'attender charges' and Rs.5000/- is hereby awarded for 'Loss of amenities'.

11. Furthermore, the Tribunal has awarded a sum of Rs.10,000/- towards 'pain and sufferings' and the same is enhanced to Rs.25,000/-.



12. Taking into consideration, the nature of injuries and he was taking treatment as in-patient for more than 15 days, the Tribunal has awarded a sum of Rs.10,000/- towards 'Transport charges' and the same is hereby confirmed and under the head 'Nutrition' this Court enhanced from Rs.5,000/- to Rs.15,000/-.

13. Accordingly, the award of the Tribunal in M.C.O.P.No. 1976 of 2008 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	permanent disability	Rs. 70,000/-	Rs. 70,000/-
2.	Pain & Suffering	Rs. 10,000/-	Rs. 25,000/-
3.	Transport	Rs. 10,000/-	Rs. 10,000/-
4.	Nutrition	Rs. 5,000/-	Rs. 15,000/-
5.	Attender charges	----	Rs. 10,000/-
6.	Loss of amenities	----	Rs. 5,000/-
	Total	Rs. 95,000/-	Rs. 1,35,000/-

The compensation awarded by the Tribunal is enhanced from Rs.95,000/- to Rs.1,35,000/- which shall carry interest at the rate of 7.5% per annum.

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.95,000/- to Rs.1,35,000/-.

(iii) The claimant-petitioner is not entitled to any interest in 74 days delay in preferring the C.M.P.

(iv) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(v) The second respondent/National Insurance Company Limited is directed to deposited the enhanced compensation amount awarded by this court, i.e., Rs.1,35,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of



deposit to the credit of M.C.O.P.No. 327 of 2005, dated 03.09.2013 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruvannamalai within a period of eight weeks from the date of receipt of a copy of this order.

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(vi) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal Sub Judge, Tiruvannamalai.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.1583

+1cc to M/s.M.Malar, Advocate, S.R.No.1201

C.M.A.No.392 of 2015

RSV(CO)

CS/02/09/2021