

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3422 OF 2012

C.Varadharajan

... Appellant/Claimant

..Vs..

1. D.Kandasamy

2. S.K.S.Sivakumar

3. M/s The New India Assurance Company Limited,
Office at KVR Complex, III Floor,
80 feet road, Karur 639 002.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 10.09.2009 passed in M.C.O.P.No.679 of 2008 by the Principal District Judge, Motor Accident Claims Tribunal, Erode.

For Appellant : Mr.V.S.Kesavan

For II respondent : Mr.M.Krishnamoorthy (for R3)
R2- Notice served
R1- Notice dispensed with

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 the compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 19.05.2008.

3. The brief case of the claimants is as follows: On 19.05.2008 at about 12.30 p.m. the claimant was riding a

motorcycle bearing registration No.TN-33-7242 on the Vasuki third street Road, and while nearing the place, opposite to the Sethuraman Textiles Godown, a speedy bus bearing registration No.TN-47-Q-8987 hit the motorcycle on its back, thereby he sustained fracture and also injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of accident and since the second respondent/ owner of the vehicle insured his bus with the third respondent/ insurance company, both of them are liable to pay compensation.

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 two other witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P21 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.1,25,540/- to the claimant. (Though the total compensation comes to Rs.1,25,540/-, the Tribunal has wrongly mentioned the total compensation as Rs.1,23,540/- Therefore, the actual compensation is taken into account). The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Transportation charges	2,000
2	Medical bills	48,540
3	Partial permanent disability	60,000
4	Pain and sufferings	10,000
5	Loss of income	5,000
	Total	1,25,540

Aggrieved over the compensation awarded by the Tribunal, the claimant has filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that the claimant had sustained severe injuries and he lost his earning capacity, however, the Tribunal has awarded a very meagre amount as compensation. He further submitted that the Tribunal has awarded only a sum of Rs.2,000/- towards

transportation charges, whereas, the bills produced by the claimant were more. Further, immediately after passing the Award, the claimant underwent two surgeries and spent huge money. But the Tribunal has not awarded any amount towards "future medical expenses". He also submitted that the Tribunal has not awarded any amount towards " Loss of amenities" and " Extra Nourishment" and therefore, he prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted the after analysing the evidence and the documents on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

11. Point

It is the contention of the appellant/ claimant is that the accident took place on 19.05.2008 and during the accident, the claimant has sustained fracture and multiple grievous injuries. This fact was not denied by the respondents. As per the discharge summary Ex.P9, the petitioner was admitted as inpatient in KMC Hospital Erode and discharged on 01.06.2008. Further, it is stated that the claimant had spent huge amount towards surgery and further treatment and even after discharging, he was taking continuous treatment. The contention of the appellant is that even after passing the Award by the Tribunal, the claimant had undergone for two surgeries and he had spent more money for interlocking nailent removal and bone grafting and therefore, prayed for enhancement of compensation.

12. A perusal of the Award shows that no amount was granted towards " Loss of amenities" and " Attender's charges". Considering the above submissions and also taking into account the nature of the injuries sustained by the appellant/claimant, this court is inclined to modify the Award passed by the Tribunal. The revised compensation awarded under various heads is extracted hereunder

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Transportation charges	2,000	5,000
2	Medical bills	48,540	48,540

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
3	Partial permanent disability	60,000	60,000
4	Pain and sufferings	10,000	15,000
5	Loss of income	5,000	10,000
	Loss of amenities	-	50,000
	Extra nourishment	-	5,000
	Attender's charges	-	5,000
	Total	1,25,540	1,98,540

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 1,25,540/- to Rs.1,98,540/-. No costs.

(ii) The insurance company is directed to deposit the revised compensation of Rs.1,98,540/- 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/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge,
Motor Accident Claims Tribunal, Erode.

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.12676

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.12938

CMA.No.3422 of 2012

NRL (CO)

CS/21/09/2021