



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA. No.3129 of 2012

M. Rajendran ... Appellant/Petitioner
..vs..

1.P.R.Rajendran

2.The New India Assurance Co., Ltd.,
No.46, Moore Street,
Chennai - 01. .. Respondents

(The 1st respondent exparte in lower court, hence notice may be dispensed with)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2008 made in M.C.O.P.No.966 of 2004, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr. K. Varadha Kamaraj
For Respondent No.1 : Notice unserved
For Respondent No.2 : Mr. G. Udaya Sankar

J U D G M E N T

Dissatisfied with the judgment and decree, dated 19.08.2008, passed by the Tribunal awarding compensation of Rs.1,67,000/- along with interest at the rate of 7.5% per annum, the claimant/appellant is before this Court for enhancement of compensation.

2. It is the case of the claimant/appellant herein that the appellant met with an accident on 28.01.2004 at about 7.15 hours, when the appellant was a pillion rider in a cycle, at Koladi Road, Chinnakoladi Village, a lorry bearing registration No.TN-09 H 0700 was driven by its driver in a rash and negligent manner, hit the appellant's cycle resulting in the appellant/pillion rider sustaining grievous injuries. On complaint, a case in Cr.No.16 of 2004 for the offence under Sections 279 and 332 II of I.P.C. has been registered in the Thiruverkadu Police Station. The appellant filed a claim petition before the Tribunal, claiming compensation of Rs.4,00,000/- for the injuries sustained by him.



3. The Tribunal, based on the oral and documentary evidence after examining two witnesses as PW1 and PW2 and marking seven exhibits as Exs.P1 to P7, has allowed the petition in part and awarded a sum of Rs.1,67,000/- under various heads and the respondents are jointly and severally ordered to deposit the said award amount with interest at 7.5% per annum from the date of filing (11.02.2004) till the date of deposit (excluding the period of dismissal for default, if any) with proportionate costs in a month.

4. Heard the learned counsel appearing for the appellant / claimant and the learned counsel appearing for the second respondent / Insurance Company and perused the materials available on record.

5. The learned counsel for the appellant submitted that the Tribunal ought to have fixed the loss of earnings at Rs.72,000/- and disability at Rs.78,000/-; Transportation Charges at Rs.10,000/-;

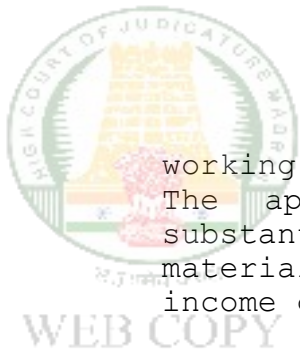
Nutrition at Rs.10,000/- and medical expenses at Rs.1,00,000/-. The appellant has marked disability certificate as Ex.P6 and medical bills as Ex.P3 and X-ray as Ex.P7. PW2 has assessed the disability at 30%. The Tribunal without any basis, awarded lesser compensation of Rs.1,67,000/-. Therefore, the award passed by the Tribunal is liable to be modified.

6. The learned counsel for the second respondent/Insurance Company would submit that the appellant herein is the pillion rider of the cycle. He further submitted that the accident took place on 28.01.2004 and the appellant being an in-patient with grievous injuries gave complaint within a day shows that the appellant came with unclean hands to this court. The rider of the lorry has driven the vehicle in a rash and negligent manner and caused the accident, due to which, a criminal case was also registered against him and charge sheet has also been filed. The driver of the lorry is solely and personally liable to compensate the

petitioner. Therefore, the Insurance Company is not liable to pay any amount and the appellant herein being the pillion rider of the cycle, is not entitled to any compensation. Hence, this appeal is liable to be dismissed.

7. From a perusal of Exs.P1 to P7, it reveals that the appellant and the lorry bearing registration No.TN-09 H 0700 is also responsible for the accident and a case has been registered in Thiruverkadu Police Station in Cr.No.16 of 2004 for the offence under Sections 279 and 332 II of I.P.C., against the appellant for his involvement in the accident.

8. From the materials available on record, it is seen that the appellant had claimed before the Tribunal that he was



working as a mason and was earning a sum of Rs.250/- a day. The appellant had failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has fixed a meagre amount as notional income of the appellant. The accident is of the year 2004.

9. Insofar as quantum of compensation is concerned, though the appellant's involvement in the accident is proved, considering the contributory negligence, this Court is of the view that it would be fair to enhance the compensation to some extent by taking note of the injuries sustained and the consequential expenses incurred by him. As per Ex.P2-Discharge summary, it is stated that the appellant has sustained multiple ribs fracture on both sides, bilateral scapula fracture and bilateral haemopneumo thorax. He had taken treatment in Billroth Hospital, Chennai and still under treatment as outpatient. Ex.P2- Discharge summary issued by Dr.K.J. Mathiazhagan also revealed the said fact. Further as per Ex.P6 - Disability Certificate, the appellant had sustained 30% permanent disability. Considering the nature of fracture and injuries sustained by the appellant, this Court confirms the disability at 30% assessed by PW2/Dr.K.J.Mathiazhagan and by fixing Rs.1500/- per disability, compensation enhanced to Rs.45.000/- for permanent disability.

10. Accordingly, this Court modifies the compensation under various heads as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning	30,000	30,000	Confirmed
2.	Transportation charges	5,000	5,000	Confirmed
3.	Extra Nourishment	5,000	10,000	Enhanced
3.	Damage to cycle	2,000	2,000	Confirmed
4.	Medical Expenses	75,000	75,000	Confirmed
5.	Pain and Sufferings	20,000	30,000	Enhanced
6.	Permanent Disability	30,000	45,000	Enhanced
	Total	Rs.1,67,000/-	Rs.1,97,000/-	Enhanced by Rs.30,000/-



11. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.1,67,000/- is hereby enhanced to Rs.1,97,000/- (Rupees One Lakh Ninety Seven Thousand Only) together with interest at the rate of 7.5% per annum from the date of numbering the appeal till the date of deposit.

12. According to the learned counsel for the second respondent/Insurance Company, the entire compensation amount passed by the Tribunal was deposited before the Tribunal and the same was withdrawn by the appellant. Further, he submitted that there is a delay in filing an appeal. Therefore, the period of delay in filing the appeal has to be excluded for payment of interest to the appellant. Such request of the Insurance Company is accepted by this Court. Accordingly, the appellant is entitled for interest from the date of claiming petition till the date of realisation of the enhanced compensation amount. In other words, the appellant is not entitled for interest for the period of delay in filing the appeal till the date of numbering the appeal. No costs.

13. The second respondent/Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, along with interest at the rate of 7.5% per annum from the date of numbering the appeal till the date of deposit, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is entitled to withdraw the same on filing an appropriate application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)
//True Copy//

Sub Assistant Registrar

gv

To

1. The Motor Accidents Claims Tribunal
V Small Causes Court, Chennai.

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

+2ccs to Mr.V.Mohana choundry, Advocate SR.No. 5142

+1cc to Mr.G.Udayasankar, Advocate SR.No. 4961

CMA.No.3129 of 2012

CP(CO)

A.SK(16.09.2021)

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