



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2021

Pronounced on : 13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2014 of 2014

and M.P.No.1 of 2014

K.Narayanan

..Appellant/Petitioner

Vs.

1.D.Velu

(Since R1 remained ex-parte before
the Tribunal his presence may be dispense with)

2.New India Assurance Company Limited,
No.92, G.N.Chetty Road,
T.Nagar, Chennai-17.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.09.2012 in M.C.O.P.No.756 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.VI, Chennai.

For Appellant :: Mrs.M.Malar

For R2 :: Mrs.R.Sree Vidhya

R1 :: Exparte

JUDGMENT

(The case has been heard through video conference)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.09.2012 in M.C.O.P.No.756 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.VI, Chennai.



2.The appellant is claimant in M.C.O.P.No.756 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.VI, Chennai. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.08.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the TATA Sumo Car belonging to the 1st respondent and directed the 2nd respondent, being the insurer of the TATA Sumo Car to pay a sum of Rs.90,000/- as compensation to the appellant.

4.Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of the compensation.

5.Mrs.M.Malar, learned counsel for the appellant submitted her arguments. As per her submissions, the appellant/injured sustained grievous injuries viz., fractures at the isthmus of iliopubie region and multiple injuries all over his body. Though the Medical Officer/P.W.2 assessed the disability at 35%, but the Tribunal without any reason, reduced the same to 25%. Also the Tribunal had fixed quantum at Rs.1,800/- per disability and awarded a meagre compensation which has to be enhanced. She would further submit that the compensation under other heads viz., transportation, extra nourishment and pain and sufferings, the Tribunal had not awarded compensation appropriately. Hence, Mrs.M.Malar, the learned counsel seeks enhancement of the compensation.

6.On the other hand, Mrs.Shree Vidhya, learned counsel for the Insurance Company had submitted her arguments. As per her submissions, the learned Tribunal had properly appreciated the evidence and based on the evidence had passed the award which is fair and reasonable, as per the evidence available before the Tribunal. This appeal lacks merit and is liable to be dismissed.

Point for Consideration:

Whether the appellant/claimant is entitled to enhancement of compensation?

The short facts relevant to the case are as follows:



7. On 21.08.2007, at about 12.30 hours, the claimant was riding the motorcycle bearing Registration No. TN-42-Y-7545 at the junction of 6th Avenue and 1st Block, 1st Street, near MGR Medicals, Thirumangalam, Chennai. At that time, a car bearing Registration No. TN-22-AA-1210 proceeding from East direction which was driven by its driver in a rash and negligent manner endangering public safety and hit on the motorcycle belonging to the claimant. The claimant fell down on the road and sustained multiple grievous injuries all over his body. Immediately he was admitted to hospital, underwent surgery and was discharged. Therefore, he filed the claim petition in M.C.O.P.No.756 of 2009 before the Tribunal.

8. The claimant had filed the claim petition in M.C.O.P.No.756 of 2009 seeking compensation of Rs.5,00,000/-. After due enquiry, the Tribunal had passed award granting a sum of Rs.90,000/- as compensation. The injured victim of the accident was treated as in-patient from 21.08.2007 to 27.08.2007. The Doctor who assessed the disability had given disability certificate. P.W.2/Doctor in his cross examination admitted that he has not given medical treatment. Under those circumstances disability assessed by the P.W.2-Doctor is too high since the claimant was 58 years at the time of accident only Rs.1,800/- per percentage was fixed as loss of income for 25% of disability. The break-up details of the amounts awarded by the Tribunal are as follows:

Sl. No.	Head under which the amount is awarded by the Tribunal	Amount (in Rs.)
1	Loss of earning	15000
2	Transport to hospital	10000
3	Extra nourishment	5000
4	Pain and sufferings	15000
5	Disability at 25% at Rs.1,800/- per percentage	45000
	Total	90000

9. It is not in dispute that the appellant/ injured was at the age of 50 at the time of accident. On consideration of Ex.P2/disability certificate and the injuries sustained by the appellant, though this Court is convinced with the reduction of



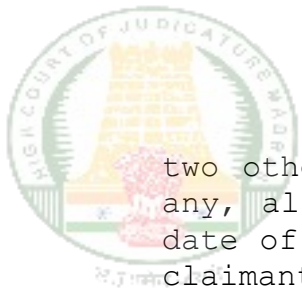
the disability from 35% to 25% , but this Court is inclined to fix at Rs.2,000/- disability and thereby the appellant is entitled to Rs.50,000/- under the head of disability. As regards the compensation awarded under the heads pain and sufferings, extra nourishment and transportation is concerned, this Court is of the view that the Tribunal has awarded meagre compensation. Admittedly the injured had taken treatment from 21.08.2007 to 27.08.2007 and thereafter from 31.08.2007 to 04.09.2008. Therefore, this Court feels it appropriate to enhance the compensation under the heads viz., pain and sufferings at Rs.25,000/-, extra nourishment at Rs.25,000/- and transportation at Rs.15,000/-. Now, the modified compensation is as follows:

Sl. No.	Head under which the amount is awarded by the Tribunal	Amount (in Rs.)
1	Pain & sufferings	25000
2	Extra nourishment	25000
3	Transportation	15000
4	Disability	50000
	Total	1,15,000

10. Accordingly, the point for consideration is answered in favour of the appellant/claimant and against the second respondent/Insurance Company herein.

11. The accident occurred on 21.08.2007, claim petition was filed on 03.09.2007 and the compensation was granted by the Tribunal was on 25.09.2012, while so, the present appeal has been filed with the delay of 276 days. Therefore, the appellant is not entitled for the interest for the period of delay in filing the appeal.

12. In the light of the above, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the enhanced amount of Rs.25,000/- to the credit of M.C.O.P.No.756 of 2009 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.VI, Chennai, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs (less the interest for the period of delay), through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and



two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi
To

1.The Judge,
Motor Accident Claims Tribunal,
Court of Small Causes No.VI, Chennai.

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

+1 CC to M/s.M. Malar, Advocate sr 40577
+1 CC to M/s.R. Sreevidya, Advocate sr 40933.

C.M.A.No.2014 of 2014

CA(CO)
SP(18/03/2022)