



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.910 of 2014

Sham @ Soundar ... Appellant/claimant
Vs.
1. K.N.Balasubramanian
2. The Manager, ICICI Lombard General
Insurance Co. Ltd., ICICI Bank Towers,
Bandra-Kurla Complex, Bandra East,
Mumbai-51. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.12.2011 passed in M.C.O.P.No.362 of 2009 by the Additional Special Judge, Motor Accident Claims Tribunal, Krishnagiri

For Appellant : Mr.Mukund R. Pandiyan
For I respondent : No appearance
For II respondent : Mrs. R.Sreevidhya

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 to enhance the compensation.

2. The appellant/ claimant has filed a claim petition before the Tribunal seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 01.06.2007.

3. The brief case of the claimant is as follows:
On 01.06.2007, at about 13.45 hours, the claimant was riding his two wheeler bearing registration No. KA 03/ES 1055 along Krishnagiri - Hosur road and while nearing Rayakottai Junction Road, a Tanker lorry bearing registration No.TN37/AJ.2333, dashed the two wheeler on its back, due to which the claimant sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the tanker lorry was the cause of accident and since the first respondent/ owner of the vehicle insured his Tanker lorry with the second respondent/ insurance company, both of them are liable to pay compensation.



4. The claim petition was resisted by the second respondent by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr.M.Devandiran were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked. On the side of the respondents, no oral evidence was adduced, however Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,39,047/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Future loss of income	60,000
2	Partial loss of income	13,500
3	Medical Bills	42,547
4	Nutritious Food	3,000
5	Pain and sufferings	10,000
6	Loss of amenities	10,000
7	Total	1,39,047

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

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

8. The grounds for the appeal is that the Tribunal did not consider the evidence of the Doctor, who was examined as PW2 and the disability Certificate Ex.P7, in which he assessed the disability suffered by the claimant as 70%. It is the further contention of the appellant is that without any rebuttable evidence on material, the Tribunal on its own has assessed the disability as 30%, which is unjust, unfair and the compensation awarded under the other heads also very meagre and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company strongly objected that by considering the fact that the claimant has sustained only rib bones fracture, the Tribunal has rightly assessed the disability suffered by the claimant as 30%. She further submitted that the Tribunal has awarded a just compensation and hence, the same does not warrants any interference by this court.

10. Now the points for determination is

- (i) Whether the compensation awarded by the Tribunal has to be enhanced.?



11. Point No.1:

After the arguments advanced by both the counsels and after discussion, the learned counsel appearing for the appellant submitted that the disability suffered by the claimant may be fixed at 50%. The learned counsel appearing for the insurance company has also submitted that the above said percentage can be fixed by this court.

12. In view of the submissions made by both the counsels, the disability suffered by the claimant is fixed at 50%. As far as the compensation awarded per percentage is concerned, the Tribunal has awarded a sum of Rs.2,000/- and it is not objected by the counsel for the insurance company. Accordingly, a sum of Rs.1,00,000/- is awarded towards "Future Loss of Income". The claimant was treated as inpatient for nearly two months and therefore, a sum of Rs.10,000/- is awarded towards "Attender's charges". Further, by considering the facts and circumstances of the case and the injuries sustained by the claimant, this court is inclined to modify the award passed by the Tribunal and the modified compensation awarded under various heads are extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Future loss of income	60,000	1,00,000
2	Loss of income	13,500	13,500
3	Medical Bills	42,547	42,547
4	Nutritious Food	3000	5,000
5	Pain and sufferings	10,000	20,000
6	Loss of amenities	10,000	15,000
7	Attender's charges	-	10,000
	Total	1,39,047	2,06,047
	Rounded off to		2,06,000

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 1,39,047/- to Rs.2,06,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the enhanced compensation of Rs.2,06,000/- 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 eight 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

The Additional Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

+lcc to Mr.Mukund R.Pandian, Advocate, S.R.No. 9707

+lcc to Mr.R.Sreevidhya, Advocate, S.R.No. 9698

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CP(CO)
GN(13/09/2021)