



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.1226 OF 2014

G.Mouly Prasad

... Appellant/Claimant

Versus

1. V.Suresh

2. The Divisional Manager,
National Insurance Company Ltd.,
Div.No.10, Flat No.101-106, N-1,
BMC House, Connaught Place,
New Delhi - 110 001.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 09.03.2012 made in M.C.O.P.No.642 of 2009 on the file of the Motor Vehicle Claims Additional Special Judge, Krishnagiri.

For Appellant : Mr.K.Prasanna
For M.Sriram

For Respondents
For R1 : Notice served
For R2 : Ms.N.B.Surekha

J U D G M E N T

This appeal is laid as against the judgment and decree dated 09.03.2012 passed by the learned Additional Special Judge, Motor Vehicle Claims Tribunal, Krishnagiri, in M.C.O.P.No.642 of 2009, thereby awarded the compensation to the tune of Rs.76,500/-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 30.08.2006 when the claimant was riding his two wheeler in Krishnagiri town, near junction road, a Maruthi van, which was belonged to the first



respondent, driven by its driver in rash and negligent manner and coming in the back side of the two wheeler, dashed the vehicle. Due to the said accident, the claimant fell down and sustained grievous injury. Thereafter he had given first aid at Dr.Umapathy clinic and thereafter he had taken treatment at Government Hospital, Krishnagiri. Hence the claimant filed claim petition seeking compensation at Rs.5,00,000/-.

4. Resisting the same, the respondent filed counter stating that the accident was took place only on the rash and negligent driving of the claimant and not on the fault of the first respondent's vehicle driver. Therefore, the second respondent is not held to be liable to pay any compensation as claimed by the claimant and sought for dismissal of the claim petition.

5. On the side of the claimant, examined P.W.1 & P.W.2 and marked Ex.A.1 to Ex.A.7. On the side of the respondent, no one was examined and no material has been marked as exhibit. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.76,500/- as compensation payable by the respondent. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant came forward with the present appeal for enhancement.

6. The learned counsel appearing for the appellant/claimant submits that the claimant undergone treatment for the fracture of Avulsion Anterior Tibial Spine, which is also certified by P.W.2. His disability was assessed at 30%. However the Tribunal awarded a sum of Rs.40,000/- for his disability. On other heads also, the Tribunal awarded very meager amount as compensation. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent contended that the claimant did not undergo for any surgery and he never admitted into the hospital. He was treated as out patient and taken treatment for his muscles stiffness. Even then, the Tribunal excessively awarded a sum of Rs.2,000/- per percentage for his disability. Further she submitted that the claimant failed to produce any discharge summary to prove that he was admitted as inpatient. There is absolutely no proof to show that the claimant treated for a long period. Therefore she prayed for dismissal of the present appeal.

8. Heard Mr.K.Prasanna, learned counsel appearing for the claimant and Ms.N.B.Surekha, learned counsel appearing for the respondent.



9. On 30.08.2006, when the claimant was riding in his two wheeler along with pillion rider, the vehicle belonged to the first respondent, insured with the second respondent dashed the two wheeler and caused accident. Due to the accident, the claimant sustained fracture on Avulsion anterior Tibial Spine and it is mal united. Therefore, the claimant suffered Post Traumatic Arthritis and restricted range of movements. Admittedly, except the wound certificate, the claimant did not produce any document to prove that he was admitted as inpatient and took treatment for long period. No discharge summary was produced by the claimant and he had not undergone any surgery. Except the disability certificate given by P.W.2, which is marked as Ex.P.7, no other documents were marked by the claimant. Considering the same, the Tribunal rightly awarded a sum of Rs.40,000/- towards temporary disability. However, the Tribunal awarded very meager amount as compensation under the heads of nutritious food and attenders expenses. More over, the interest on the award amount granted by the Tribunal has to be reduced to 7.5% from 9%.

10. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Temporary disability	40,000	40,000
2	Loss of income	13,500	13,500
3	Nutritious food	2,000	5,000
4	Attenders expenses	1,000	5,000
5	Pain and suffering	10,000	10,000
6	Loss of amenities	10,000	10,000
	Total	76,500	83,500

11. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.76,500/- to Rs.83,500/-

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of



receipt of copy of this Judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by filing proper application before the Tribunal.

(v) The appellant/claimant is not entitled to any interest for the condoned delay (default) period, if any.

(vi) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Additional Special Judge,
Motor Vehicle Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.24827
+1cc to Mr.Mukund R.Pandiyar, Advocate, S.R.No.24787

C.M.A.No.1226 of 2014

CNR(CO)
PM/22/10/2021