

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

CIVIL MISCELLANEOUS APPEAL NO.2493 OF 2012

G.Manikandan

... Appellant/
Petitioner

Vs.

1. P.Selvaraj

2. M/s.New India Assurance Company Limited,
C/o.Motor Third Party Claims Offices,
No.45, Moore Street, Chennai - 600 001.

... Respondents/
Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 05.04.2011 made in MCO.P.No.175 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Court, Fast Track - II, Chennai.

For Appellant : Mr.T.G.Balachandran

For respondents : M/s.C.Sangamithirai - R2

R1 - No representation

JUDGMENT

This appeal has been filed by the appellant/claimant for enhancement of compensation. The Tribunal passed an award in favour of the appellant for a sum of Rs.88,853/- against the respondents together with interest at the rate of 9% from the date of the claim petition till the date of realization.

2. The case of the claimant before the Tribunal is that on 26.11.2006 at about 13.15 hours, when the appellant along with one Mahesh was travelling in motor cycle bearing Registration

No.TN-02-Y-7024 in East Coast Road, near Sakthi Bairavi School, Panaiyur, from North to South, the ambassador car bearing Registration No.TN-04-E-6407, owned by the first respondent, came in the opposite direction in a rash and negligent manner and also in wrong side and dashed against the motor cycle, as a result of which the rider of the motor cycle, viz., Mahesh died on the spot and the appellant, who is a pillion rider, sustained grievous injuries. The accident had occurred due rash and negligent driving of the driver of the first respondent's car. At the time of accident, the deceased was aged 22 years and he was working as a carpenter and was earning a sum of Rs.5000/- per month. Due to the accident, the appellant sustained fracture and injuries and claimed compensation of Rs,10,00,000/- from the respondents, being the owner and insurer of the alleged offending vehicle.

3. The first respondent filed counter stating that the accident had occurred due to rash and negligent driving of the motor cycle, which dashed against the car and this respondent is not responsible for the accident. His car has been insured with the second respondent from 10.05.2006 to 09.05.2007. Hence, if at all any compensation has to be paid, it has to be paid only by the second respondent and this petition has to be dismissed as against this respondent.

4. Denying the averments in the claim petition, the second respondent filed a counter stating that only due to rash and negligent driving of the motor cycle by the deceased Mahesh, the accident had occurred. The age, occupation, income of the petitioner and the deceased and injuries sustained by the petitioner and deceased are denied. Hence, prayed for dismissal of the claim petition.

5. The Court below after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.88,853/- under the following heads :

S.No.	Particulars	Amount in Rs.
1.	Loss of Income	7,500/-
2.	Pain and suffering, Transportation & Extra Nourishment	15,000/-
3.	Medical expenses	16,353/-
4.	For 40% Disability	50,000/-
	Total	88,853/-

Aggrieved over the same, the appellant/claimant have filed this appeal seeking enhancement of the compensation.

6. According to the learned counsel for the appellants, the tribunal failed to see that the appellant has sustained neuro disability of 30% and ortho disability of 40%. Further the appellant took treatment as in patient at Government General Hospital from 26.11.2006 to 05.12.2006 and then continuously taking treatment as out patient due to severity of injury. The Tribunal has awarded only meagre compensation towards loss of income and compensation under the heads transportation and extra nourishment have to be assessed independently with an eye on the severity of injuries sustained. Hence, prays to enhance the compensation.

7. The learned counsel for the second respondent-Insurance company would submit that the Tribunal after considering both the oral and documentary evidence of both sides has awarded just compensation and hence, the well considered award of the Court below needs no interference.

8. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

9. On a perusal of the materials available on record, it is seen that the claimant had sustained diffuse akonal injury, lefort II fracture, Maxilla fracture, Zygoma fracture and thereby, the ortho doctor has certified 30% partial permanent disability. Further, the neuro doctor assessed 40% permanent disability. In support of the treatment taken by the appellant and disabilities suffered by the appellant, the medical history of the appellant has also been marked as Ex.P.7. The Tribunal ought to have considered the nature of injuries and ought to have awarded fair compensation towards "Loss of earning power due to disability". By following the well settled decisions of the Honourable Supreme Court to award just compensation to the injured to put his life as before, it is just and proper to fix 40% disability and award Rs.2,000/- per percentage of disability and thus under the head "loss of earning power due to disability" would come to Rs.80,000/-.

10. The injured, claimed that he was a carpenter and was earning Rs.5000/- per month. The tribunal, taking the avocation, fixed Rs.3750/- and given Rs.7500/- as loss of income during the period of treatment. Taking into consideration, the skilled job of the claimant, it is appropriate to fix Rs.5000/- as monthly income and considering the nature of injuries sustained due to the accident, loss of income for a period of 6 months would be fair and hence, it is appropriate to grant Rs.5000/- x 6 months

= Rs.30,000/- as loss of income during the period of treatment.

11. Taking into account the attendant factors, this court feels that the compensation granted under other heads are also inadequate and hence, it is necessary to re-quantify the same and also award Rs.20,000/- under the head "Pain and suffering" exclusively. The modified award is as under.

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award Modified by this court
1.	Loss of income during the period of treatment	7,500/-	30,000	enhanced
2	Extra Nourishment and Transportation expenses	15,000	20,000	enhanced
3	For Disability of 30% non enhanced to 40% at the rate of Rs.2000/- per disability	50,000	80,000	enhanced
4	Medical Expenses	16,353	16,353	confirmed
5	Pain and suffering	---	20,000	granted
	Total	88,853/-	1,66,353/-	enhanced

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.88,853/- is hereby enhanced to Rs.1,66,353/- (Rupees One lakh sixty six thousand three hundred and fifty three only) together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount along with interest and costs as apportioned by the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vrc/nvsri

To

1. The Motor Accidents Claims Tribunal,
Additional District Sessions Court,
Fast Track - II, Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.29475

+1cc to M/s.C.Sangamithirai, Advocate, S.R.No.28943

C.M.A.No.2493 of 2012

MG(CO)
PM/14/07/2022