



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.2104 of 2021

Arputha Selvan

... Appellant/Petitioner

Vs.

1. K.Jesudoss

2. Reliance General Insurance Company Limited,
No.6, Reliance House,
Haddows Road,
Nungambakkam,
Chennai - 600 006.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance the award dated 05.11.2019 made in MACTOP No.4960 of 2016 on the file of the Motor Accident Claim Tribunal, II Special Sub Judge, Small Causes Court, Chennai.

For Appellant : Mr.Rajeshkumar Maurya
for M/s.S.R.Suga

For Respondents : Mr.S.Arunkumar for R2
R1-Dispensed with

JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM.,J)

The claimant in MCOP No.4690 of 2016 on the file of the Motor Accident Claims Tribunal (II Spl. Sub-Judge, Small Causes Court), Chennai, has come up with this appeal seeking enhancement of compensation.

2.The appellant met with an accident on 21.06.2016 while he was riding a motorcycle bearing Reg.No.TN-09-BK-3458. According



to him, a Tempo Van bearing Reg.No.TN-12-A-3846 came with a very dangerous speed and in a rash and negligent manner and hit against his motorcycle, thereby, he sustained injuries. Though the claim was resisted by the Insurance Company on the ground that the claimant himself is the Tortfeasor, the Tribunal having found that the driver of the Tempo Van caused the accident, awarded compensation of Rs.1,01,000/- along with interest at the rate of 7.5% per annum. Being dissatisfied with the said sum, the claimant preferred this appeal.

3.The learned counsel appearing for the appellant/claimant Mr.R.Rajeshkumar Maurya has placed reliance on the decision of this Court made in CMA Nos.2560 to 2567 of 2015 dated 31.08.2018 (New India Assurance Co. Ltd., vs. Saraswathi and others) in support of his argument that the injured claimant is entitled for more compensation since his spleen has been removed.

4.Per contra, the learned counsel appearing for the second respondent/Insurance Company Mr.R.Arunkumar would state that the appellant himself has produced a circular issued by the Government of Tamil Nadu dated 06.08.1986 before the Tribunal and on the basis of the circular, the Tribunal came to the conclusion that the injured has suffered 10% disability and awarded compensation. According to the learned counsel, the Judgment cited by the learned counsel for the appellant/claimant is not relevant to the facts of this case.

5.We have carefully considered the rival submission of the learned counsel appearing for the appellant/claimant, the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

6. In the instant case, the appellant/claimant has averred in the claim petition that at the time of accident, he was working in TCS, Chennai and earning Rs.24,000/- per month. Admittedly, the appellant has not examined Doctor to prove the injuries and the extent of the disability suffered by him on account of the accident. It cannot be disputed that the circular issued by the Social Welfare Department dated 06.08.1986 states that for removal of spleen, disability has to be assessed as 10%. Therefore, the Tribunal has awarded Rs.30,000/- towards permanent disability by granting Rs.3,000/- per percentage. Though the learned counsel appearing for the appellant has contended that the injured claimant could not attend his work for a period of six months, but the salary slip produced by the claimant before the Tribunal shows that he could not attend his work only for two months i.e., August and September 2016. They further reveal that the monthly salary of the claimant is not constant and he was paid Rs.15,000/- per month average. Hence, we award Rs.30,000/- for loss of income



during the treatment period. The claimant was 23 years at the time of accident. Indisputably, his spleen was removed, so, naturally, his immunity to some extent has been reduced. Hence, we award Rs.2,00,000/- for removal of spleen. Considering all these aspects, we enhance the award amount of the Tribunal as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
For Permanent Disability	30,000/-	30,000/-	confirmed
Pain and suffering	15,000/-	30,000/-	enhanced
Transportation	5,000/-	20,000/-	enhanced
Extra Nourishment	15,000/-	15,000/-	confirmed
Damage to Cloth & Articles	1,000/-	5,000/-	enhanced
Loss of Life	10,000/-	Nil	set aside
Attendant charges	10,000/-	30,000/-	enhanced
Loss of Amenities	15,000/-	50,000/-	enhanced
For Removal of Spleen	Nil	2,00,000/-	granted
Loss of Income	Nil	30,000/-	granted
Total	1,01,000/-	4,10,000/-	enhanced

7. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.1,01,000/- is enhanced to Rs.4,10,000/-. The rate of interest fixed by the Tribunal as 7.5% per annum is confirmed. The second respondent/Insurance Company is directed to deposit the modified award amount of Rs.4,10,000/- with accrued 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 appellant/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

skn



To

1. The Motor Accident Claim Tribunal,
II Special Sub Judge,
Small Causes Court, Chennai.

+1cc to M/s.S.R.Suga, Advocate, S.R.No.15273

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.15574

C.M.A.No.2104 of 2021

NRJK (CO)
SU (17/05/2022)