



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.4243 of 2019

Meiyappan

... Appellant/Petitioner

Vs.

1. Resico India Pvt. Ltd.,
No.196/4, Mettupalayam Village,
Sriperumbudur Taluk,
Kancheepuram District.

2. ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, Arihant Plaza,
First Floor, Wall Tax Road,
Chennai - 600 003

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the Judgment and Decree, dated 26.07.2019, passed in M.C.O.P.No.7525 of 2016, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Tribunal) Small Causes Court, Chennai.

For Appellant : M/s.Amar.D.Pandiya

For Respondents : Mr.B.Siva Kollapan
for R2
R1 - Served, No appearance

J U D G M E N T

The claimant is the appellant before this Court seeking enhancement of the award passed by the learned Special Sub Judge No.I, Motor Accident Claims Tribunal, Small Causes Court, Chennai in M.C.O.P.No.7525 of 2016.

2. The above claim petition has been filed by the claimant seeking compensation for the injuries sustained by him in a road accident that had occurred on 03.10.2016 at about 21.30 hrs, when the claimant was riding the motor-cycle, bearing Registration No.TN-22-AU-5628 on the Rajiv Gandhi Street Junction, Agaramthen Main Road, Thiruvanchary, Chennai. At that



time, a Range Rover Car bearing Registration No.TN-21-BZ-2121, belonging to the first respondent and insured with the second respondent was proceeding from the opposite direction. The said car was driven by its driver in a rash and negligent manner at a high speed, without following the Traffic Rules. On account of this rash driving the car hit the claimant's motor-cycle, as a result of which, the claimant was thrown out and sustained head injury and multiple grievous injuries all over the body. He was immediately taken to the hospital and had to remain in hospital for seventeen days. He had claimed a compensation of a sum of Rs.50,00,000/-. The claimant had contended that he was a building contractor and was aged about 27 years and was earning a sum of Rs.40,000/- per month. It is his case that he had driven his motorcycle following the Traffic Rules and that the accident had occurred only on account of the negligence on the part of the driver of the Range Rover Car.

3. The first respondent remained ex-parte and the claim was contested by the second respondent-Insurance Company, who had taken the conventional defences.

4. The second respondent-Insurance Company denied the nature of accident, amount of compensation claimed as well as the nature of injuries. It is their contention that the accident had occurred only on account of the negligence of the claimant and therefore, they are not liable to make good the claim.

5. The Tribunal below, after perusing the evidence and hearing the arguments, proceeded to pass an award for a sum of Rs.2,54,100/- under the following heads:

Heads	Amount in Rs.
Disability	15,000
Pain and Sufferings	20,000
Transportation	5,000
Medical Expenses	1,63,810
Extra Nourishment	10,000
Attender Charges	4,250
Loss of Earnings	16,000
Loss of future prospects	20,000
Total	2,54,060
Rounded Off to	2,54,100

Challenging the same, the claimant is before this Court.



6. It is the contention of the learned counsel for the appellant that the Tribunal taking note of the disability suffered by the claimant and also the nature of injuries sustained by him, ought to have adopted the income of the appellant at Rs.4,000/- and ought to have awarded a compensation of Rs.20,000/- (Rs.4,000 x 5%) under the head of disability. The appellant was in inpatient for 17 days and the amount awarded under the head of pain and sufferings was very low. He would also submit that the compensation has to be enhanced to the above extent.

7. The learned counsel for the second respondent-Insurance Company would submit that the award is fair and reasonable and commensurate to the injuries sustained by the claimant and the disability alleged to have been sustained by him. He would further submit that the excessive amount has been given under the head of Extra Nourishment.

8. Heard the counsel for the appellant and the learned counsel appearing for the second respondent-Insurance Company and perused the records.

9. As a result of the accident, the claimant had suffered the injuries stated supra, and after assessing the disability, the Medical Board had arrived at a disability of 5%. The claimant has been an inpatient for 17 days. Therefore the notional income has to be enhanced to a sum of Rs.4,000/- and taking into account the disability of 5%, the amount under the head of disability should be enhanced to a sum of Rs.20,000/-. Admittedly the claimant has been an inpatient for over 17 days. Therefore, his pain and sufferings has to be adequately compensated and this sum is increased to Rs.30,000/-. As rightly pointed out by the learned counsel for the second respondent-Insurance Company, the amount under the head of Extra Nourishment has to be reduced by a sum of Rs.5,000/-. The amounts due towards Attender charges can be rounded off to a sum of Rs.5,000/- Therefore, the modified award would be as follows:

Heads	Amount in Rs.
Disability	20,000
Pain and Sufferings	30,000
Transportation	5,000
Medical Expenses	1,63,810



WEB COPY

Heads	Amount in Rs.
Extra Nourishment	5,000
Attender Charges	5,000
Loss of Earnings	16,000
Loss of future prospectus	20,000
Total	2,64,810
Rounded Off to	2,64,800

10. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from Rs.2,54,100/- to Rs.2,64,800/-. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.7525 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

srn/ab

To

1. The Special Sub Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai



2. The Section Officer,
VR Section, Madras High Court,
Chennai.

WEB COPY

+1cc to Mr.S.Ravi Kumar, Advocate, S.R.No.18736

+1cc to Mr.B.Siva Kollappan, Advocate, S.R.No.21544

+1cc to Mr.B.Siva Kollappan, Advocate, S.R.No.21544 (03/06/2022)

C.M.A. No.4243 of 2019

SS(CO)
SU(02/06/2022)