



C.M.A(MD)No.1241 of 202

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.02.2023

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.1241 of 2022

P.Suresh

... Appellant/ claimant

Vs

1.S.Prema

2.The Branch Manager,
M/s.National Insurance Company Limited,
Branch Office – II,
Jerosme Building, 1st Floor,
Fort Station Road,
Trichy-2.

...Respondents/Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to call for the records relating to the judgment and decree dated 17.06.2016 made in M.C.O.P.No.1254 of 2012 on the file of the III Additional Subordinate Court cum Motor Accident Claims Tribunal, Tiruchirappalli and enhance the compensation.

For Appellant : Mr.P.Mahendran

For R1 : No Appearance

For R2 : Mr.J.S.Murali

JUDGMENT

The appeal is filed by the claimant seeking enhancement of compensation.



2. The summary of facts leading to the appeal are as follows:

On 25.01.2012, while the claimant was starting his motor cycle on the right side of the mud portion of the road, the bus belonging to the first respondent which was driven by its driver in a rash and negligent manner hit against the claimant. As a result, the claimant sustained grievous injuries and was taken to the hospital. The toes on the right leg of the claimant were amputated. The claimant at the time of the accident was aged 40 years and he was the owner of Sri Shanmuga Jewellery Shop and earning a sum of Rs. 25,000/- per month. The claimant therefore filed the claim petition seeking a sum of Rs.10,00,000/- as compensation for the grievous injuries sustained by him. According to the claimant due to the injuries sustained by him in the accident, he was not able to lead a normal life.

3. The first respondent, the owner of the vehicle remained *ex parte* and the second respondent, the insurer of the vehicle filed a counter to the claim petition denying all the contentions raised in the claim petition. The second respondent further denied the negligence, liability and also the quantum of compensation claimed by the claimant.



4. Before the Tribunal, the claimant examined himself and the Doctor as P.W.2 and marked Exhibits P.1 to P.10 in support of his claim. The second respondent neither examined any witness nor marked any documents.

5. The Tribunal on an appreciation of the entire evidence on record returned the finding of negligence against the Driver of the first respondent (ie) the owner of the vehicle and mulcted the liability on the second respondent, insurer of the first respondent. The Tribunal awarded a sum of Rs.4,13,000/- along with 7.5% interest as compensation for the injuries sustained by the claimant in the accident.

6. The learned counsel for the appellant/claimant submitted that the assessment of income by the Tribunal was erroneous and that the Tribunal failed to note the claimant was running a jewellery business and earning an income of Rs.25,000/-. The learned counsel submitted that the assessment of permanent disability at 20% was also erroneous in view of the fact that the claimant had lost all the toes in his right leg. The learned counsel further submitted that compensation awarded by the Tribunal was very meagre and therefore prayed for enhancement of the same.



7. The learned counsel for the second respondent on the other hand contended that the claimant did not file any document in support of his income and therefore, the Tribunal was justified in assessing the income at Rs.4,000/- per month. The learned counsel further submitted that the Tribunal erred in awarding double compensation for the disability sustained by the claimant. The Tribunal had awarded Rs.1,44,000/- towards loss of income and further awarded Rs.1,50,000/- towards permanent disability, which is impermissible in law. The learned counsel therefore submitted that the award of the Tribunal did not call for any interference by this Court.

8. I have heard both the learned counsels and have perused the materials placed on record.

9. The accident, negligence and liability are not disputed. The short question to be decided in this appeal is the quantum of compensation payable to the claimant. It is true that the claimant has not filed any documentary evidence except Exhibit A8, which is pan card to prove his income. It is seen that the respondents have not denied that the petitioner was running a jewellery business. While so, the income assessed by the Tribunal in my view is palpably low. The accident took place in the year 2012 and considering the fact that the claimant was the owner of a jewellery shop and doing jewellery



business, I am of the view that the income of the claimant can be safely assessed at Rs.9,000/- per month. The Tribunal assessed permanent disability at 20%, but I am of the view that disability should be assessed at 25% as all the toes of the right leg were amputated and the claimant is not able to walk without support, due to the imbalance caused by the amputation of the toes. I am therefore of the view that the permanent disability can be fixed at 25% instead of 20%. Therefore the loss of income is assessed at Rs.4,05,000/-. I am in agreement with the learned counsel for the respondent that Rs.1,50,000/- awarded towards permanent disability cannot be sustained in the light of the judgment of this Court as well as the Hon'ble Supreme Court as the same amounts to double compensation. I am therefore of the view that the award of the Tribunal needs to be interfered and the same is modified as follows:

S.No.		Tribunal	Court
1	வருமான இழப்பீட்டிற்காக	Rs.1,44,000/-	Rs.4,05,000/-
2	நிரந்தர ஊனத்திற்காக	Rs.1,50,000/-	-
3	உதவியாளர் செலவு	Rs.12,000/-	Rs.20,000/-
4	வலி மற்றும் துன்பம்	Rs.50,000/-	Rs.1,00,000/-
5	மருத்துவ செலவினங்களுக்காக	Rs.2,000/-	Rs.2,000/-
6	கஷ்டம் மற்றும் அசௌகரியத்துக்காக	Rs.30,000/-	Rs.50,000/-
7	கூடுதல் ஊட்டச்சத்து	Rs.15,000/-	Rs.25,000/-
8	போக்குவரத்து செலவு	Rs.10,000/-	Rs.25,000/-
9	Total	Rs.4,13,000/-	Rs.6,27,000/-



10. In the light of the above discussions, the claimant would be entitled to enhanced compensation of Rs.2,14,000/- along with 7.5% interest from the date of the claim petition till the date of deposit. It is also made clear that the claimant shall not be entitled to interest for the delay period of 1098 days in filing the appeal. The appeal is partly allowed. The second respondent is directed to deposit the enhanced amount within a period of 8 weeks from the date of receipt of copy of the order. On such deposit being made by the second respondent, the claimant shall be entitled to withdraw the same. There shall be no order as to costs.

16.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The III Additional Subordinate Court cum
Motor Accident Claims Tribunal, Tiruchirappalli.
2. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J

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