

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. NO.877 OF 2011

A.Arunsingh

.. Appellant

Versus

1.K.Saravanan

2.The Branch Manager,

National Insurance Company Limited,

Post Box No.23, 88-F, Bye-Pass Road,

Dharmapuri - 636 701.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.02.2006 made in M.C.O.P.No.332 of 2005 on the file of the Motor Accident Claims Tribunal [I Additional District Judge], Dharmapuri at Krishnagiri.

For Appellant : Mr.Mukund R. Pandiyan

For Respondent - 1 : No Appearance

For Respondent - 2 : Mr.N.B.Surekha

J U D G M E N T

The claimant is the appellant. He moved the Motor Accident Claims Tribunal [I Additional District Judge], Krishnagiri, in M.C.O.P.No.332 of 2005 claiming a compensation in a sum of Rs.7,00,000/- for the grievous injuries sustained by him in a motor accident involving the motor cycle. The Tribunal awarded a sum of Rs.88,924/-. The injured/claimant filed the present appeal seeking enhancement of the compensation.

2.It is the case of injury. According to the claimant, on 30.09.2004, at about 6.15 p.m., he was walking on the left side of the road along with his friend Sivalingam in Dharmapuri to Salem N.H.Main Road, a rider of the Hero Honda Splendor Motorcycle bearing Registration No.TN-29/K-1964 driven in a rash and negligent manner at a hectic speed, dashed against the claimant. In the impact of the accident, the claimant fell down.

3.In the accident, the claimant had sustained multiple fractures. The claimant was taken to the Government Hospital, Dharmapuri and then referred to Om Shakthi Hospital, Dharmapuri.

4. On examination of the claimant, the Doctor found the following multiple fractures;

- i. Laceration on the bridge of the nose 1 x 0.5 x 0.5cm
- ii. Laceration on the lower lip 1 x 0.5 x 0.5cm
- iii. Absent teeth 3 nos. upper gums
- iv. Abrasion on Rt. wrist 1 x 1cm red colour

5. The claimant had undergone an operation for his head injury and was inpatient for a period of 12 days and was discharged from the hospital. However, according to the claimant, he had been continuously getting admitted in the hospital for further treatment and had been undergoing regular checkups. Claiming that the injuries suffered by him in the accident had resulted in 20% disability assessed by P.W.2 and 35% permanent disability assessed by P.W.3, the claimant moved the Tribunal seeking compensation of a sum of Rs.7,00,000/- from the first respondent, being the owner of the motor cycle and the second respondent, being the insurer of the said vehicle.

6. Before the Tribunal, the claimant examined himself as P.W.1 and examined Doctors, who treated him as P.Ws.2 & 3. The claimant had also marked P.1 to P.15 as exhibits. The respondents had neither examined any witness nor marked any document on their side.

7. On a perusal of the entire materials and the evidence brought on record, the Tribunal came to the conclusion that the accident had occurred solely due to the negligent act of the first respondent and therefore, the respondents 1 and 2 are liable to pay the compensation to the claimant. Though the claimant had claimed a sum of Rs.7,00,000/- as compensation, the Tribunal taking into consideration various aspects, had fixed a sum of Rs.88,924/- as compensation payable to the claimant with interests at the rate of 9%. Challenging the same, the claimant has preferred the present appeal.

8. Learned counsel appearing for the appellant would submit that even though the claimant has suffered multiple injuries and the Doctor P.W.2 has given the medical certificate assessing the disability at 20% for the injuries in his face and the Doctor P.W.3 has given the medical certificate assessing the permanent disability for head injury at 35%, the Tribunal has not awarded any sum. He would further submit that the appellant was doing finance business in large scale and was running a fertilizer shop in the name and style of B.B. and Co. and also Ganesh Corporation; due to the accident, he could not continue his profession as he could not do any hard work; his face had disfigured; he is often getting head-ache and giddiness, suffering from fever and fits, he suffers from loss of memory power and he cannot even walk in straight lines as before. Further, the learned counsel for the appellant would submit that

the appellant has taken treatment even after being discharged from the hospital for several days. Though the claimant had claimed a sum of Rs.7,00,000/- as compensation, the Tribunal has awarded a meager sum of Rs.88,924/-. Accordingly, he would pray for enhancement of the same.

9.Learned Counsel appearing for the respondent/Insurance Company would submit that the Court below, after taking into consideration the entire medical records and also the documents produced on the side of the claimant had awarded a total sum of Rs.88,924/-, warranting no interference in this appeal.

10.Heard both sides and perused the records.

11.On a careful perusal of the judgment passed by the Court below, it is seen that the court below had awarded a total compensation of Rs.88,924/- under the following heads;

1. Loss of income	-	Rs. 2,000/-
2. Medical Expenses	-	Rs. 74,424/-
3. Transport Charges	-	Rs. 1,000/-
4. Pain and Suffering	-	Rs. 10,000/-
5. Damages to clothes	-	Rs. 500/-

Rs. 87,924/-

However, in the penultimate line of the award, the Tribunal has wrongly stated the total compensation as Rs.88,924/-.

12.I have heard the learned counsel appearing for the appellant and perused the various documents filed, namely, the evidences recorded and the documents filed by the claimant before the Tribunal in respect of his claim. It is seen that the Tribunal accepted the evidences rendered by Doctor / P.W.2 and accepted the injuries suffered by the claimant due to the accident has spoken to by P.W.2. However, the Tribunal had not accepted the evidence of the Doctor, who was examined as P.W.3 by the claimant and who spoke about the consequences of the head injuries suffered by the claimant, namely, he could not do any hard work; he is getting head-ache and giddiness often, and that he is suffering from loss of memory power. Records reveal that he had taken treatment as inpatient in the hospital from 30.09.2004 to 11.10.2004 and the medical bills produced by him due to the accident of Rs.74,424.44. While the Tribunal had accepted the medical bills and granted a sum of Rs.74,424/- it had not shown to accept that the claimant had suffered some grievous injuries in the accident. Looking this aspect, this Court is of the opinion that a lump sum of Rs.75,000/- can be awarded towards the head permanent disability and accordingly, it is granted. Same way, the Tribunal has granted a meager sum of Rs.1,000/- towards transport expenses, which is hereby

enhanced to a sum of Rs.5,000/-; under the head pain and suffering also, the Tribunal has granted only a sum of Rs.10,000/-. Considering the nature of injuries suffered by the claimant, this Court feels that a sum of Rs.35,000/- can be added on the head pain and suffering. However, in order to round off the figure a sum of Rs.33,076/- is added under the head pain and suffering. The sum granted under the other heads, namely, medical expenses Rs.74,424/-; damages to clothes Rs.500; and loss of income Rs.2,000/- are confirmed as it is.

13. Accordingly, this appeal stands allowed, by enhancing the compensation to a sum of Rs.2,00,000/- under the following heads;

1. Permanent disability	-	Rs. 75,000/-
2. Medical Expenses	-	Rs. 74,424/-
3. Transport Charges	-	Rs. 5,000/-
4. Pain and Suffering	-	Rs. 43,076/-
5. Damages to clothes	-	Rs. 500/-
6. Loss of Income	-	Rs. 2,000/-

Total Rs.2,00,000/-

14. Accordingly, the respondents are directed to deposit the entire award amount including the enhanced sum, if not already deposited, along with accrued interest at the rate of 9% for a period of five years from the date of claim petition and thereafter, remaining period the interest shall be calculated at the rate of 7.5%. It is needless to state that on such deposit being made, the claimant is entitled to withdraw the same by making necessary applications. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

Motor Accident Claims Tribunal
[I Additional District Judge], Krishnagiri.

+1cc to Mr.N.B.Surekha, Advocate Sr.58984

C.M.A. NO.877 OF 2011

lrs(CO)
srg(03/02/2016)