

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2828 of 2010

Sakthivel

... Appellant/Petitioner

-Versus-

1.S.Nallathambi

2.Branch Manager,

United India Insurance Co., Ltd.,

146, N.Kumar Complex,

Tiruchengode Taluk,

Namakkal District.

.... Respondents/Respondents

This civil miscellaneous petition is filed under Section 173 (1) of the Motor Vehicles Act 1998 against the judgment and decree dated 17.9.2009 made in MCOP.No.447 of 2003 on the file of the Motor Vehicles Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellant : M/s.K.Rajasekaran &
Mr.S.Regu

For Respondents : Mr.T.Ravichandran for R2
R1- Exparte before Tribunal

J U D G E M E N T

The claimant, having suffered by the award of meager compensation Rs.57,000/- as against the claim amount of Rs.5,00,000/-, has preferred the present appeal for enhancement.

2. The appellant/claimant was working as a cleaner in the vehicle belongs to the first respondent. On 13.10.2002 at about 9.00 P.M., the first respondent's vehicle bearing Registration No.TN.37-T-8331 was parked by its driver near Sengottaiyan Workshop at Vaiyappamalai - Rasipuram main road. The driver asked the claimant to check the hydraulic oil. While the claimant was checking the hydraulic oil, the driver without even informing the his cleaner mistakenly released the hydraulic lever. Due to the negligence act of the driver of the vehicle,

the jockey of the above said lorry was slipped and the lorry fell down. Resultantly, the claimant sustained grievous injuries on his left leg, mouth, nose and all over his body. Immediately, he was taken to P.M.Hospital, Rasipuram, where he was admitted as inpatient and given treatment for about 15 days, as he was injured very badly. He lost his income during the treatment period as he could not attend duty. Even after his discharge, he was unable to do his normal work. The claimant was maintaining his big family out of his income. Hence, he filed claim petition in March, 2003, seeking compensation of Rs.5,00,000/- on various heads. The claim petition shows that the claimant gave a complaint to the Elachipalayam Police Station against the driver of the offending vehicle belongs to the first respondent and the same was registered in Cr.No.298 of 2002 under Sections 279 and 338 I.P.C.

3. While the claimant was checking the hydraulic oil, the driver of the vehicle mistakenly released the hydraulic lever and as a result, the claimant sustained the grievous injuries. The Tribunal has accepted the case of the claimant/appellant that the accident had occurred only due to the negligent act of the driver of the offending vehicle. After giving a finding against the driver of the offending vehicle, since the vehicle has been insured with the United India Insurance Company Limited, the second respondent herein has also been fastened with liability. However, while fixing the liability on both the respondents 1 and 2, the Tribunal completely overlooked the fact that the appellant/claimant had taken treatment as inpatient for the period of 15 days and even after discharge from the hospital, the claimant has been taking treatment as out patient. However, the Tribunal only awarded meager amount of Rs.57,000/- as compensation.

4. To substantiate the loss of earning capacity, the claimant has produced disability certificate Ex.P8 dated 16.7.2009 issued by the Doctor along with wound certificate Ex.P2 dated 13.10.2002 and scan report Ex.P10 dated 14.10.2002. However, the Tribunal has arbitrarily fixed only a sum of Rs.1000/- per one percentage of disability. It is well settled that minimum Rs.3000/- per each percentage of disability has to be fixed. In the present case, the Tribunal, for the reason not known to the appellant, has wrongly fixed only Rs.1000/- per one percentage of disability. Therefore, if Rs.3000/- is taken as each percentage of disability, the award amount should be Rs.1,20,000/-.

5. The learned counsel appearing for the Insurance Company would submit that the claimant/appellant has not suffered permanent disability interfering his normal work.

Therefore, Rs.2000/- can be fixed per one percentage of disability. This Court finds fault with the conclusion arrived at by the Tribunal fixing Rs.1000/- per one percentage of disability. Accordingly, this Court is inclined to fix Rs.2000/- per each percentage of disability which comes to Rs.80,000/- [40 percentage X Rs.2000 = Rs.80,000/-]

6. With regard to pain and suffering, it is an admitted case that after suffering injuries in the accident, the appellant was admitted initially in the P.M. Hospital, Rasipuram as inpatient for the period of 15 days and thereafter he was taking treatment as outpatient in the hospital. The Tribunal has fixed only Rs.5000/- towards pain and suffering. Considering 40% disability suffered by the appellant, this Court is inclined to award Rs.50,000/- towards pain and suffering. Rs.5,000/- awarded towards nutrition is very low and hence, it is enhanced to Rs.20,000/-. Considering the period of treatment, Rs.2000/- awarded for loss of income is on the lower side and hence, it is enhanced to Rs.10,000/-. Rs.5000/- awarded towards transportation is confirmed. Thus, the total amount of enhanced compensation comes to Rs.1,65,000/-. The learned counsel appearing for the Insurance Company submitted that the second respondent has deposited the award amount as awarded by the Tribunal with interest and costs.

7. Therefore, the enhanced award amount is liable to be deposited by the respondents 1 and 2 jointly and severally within 4 weeks from the date of the receipt of a copy of the order and on such deposit, it is open to the appellant /claimant to withdraw the same by filing appropriate application before the Tribunal.

8. The appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vk

To

Motor Vehicles Accidents Claims Tribunal,
The Principal District Judge, Namakkal.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.T.Ravichandran, Advocate, sr.69138

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jvs co, kra 26.02.2016