

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. NO.3742 OF 2010

Mukundan

... Appellant/Petitioner

Versus

1.Yogesh

(R1 set Exparte before the Tribunal.
Hence notice may be dispensed with)

2.M/s.Reliance General Insurance Co. Ltd.,
No.15-A, PLA Towers,
11th Cross, Thillai Nagar,
Trichy - 18.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.314 of 2008 dated 30.06.2010 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondent - 1 : Exparte

For Respondent - 2 : Mr.S.Arunkumar

J U D G M E N T
सत्यमेव जयते

The claimant is the appellant. He moved the Motor Accident Claims Tribunal / District Judge, Perambalur, in M.C.O.P.No.314 of 2008 claiming a compensation in a sum of Rs.25,00,000/- for the grievous injuries sustained by him in a motor accident involving the motor cycle. The Tribunal awarded a sum of Rs.3,50,000/-. The injured/claimant filed the present appeal seeking enhancement of the compensation.

2.It is the case of injury. According to the claimant, on 28.03.2008, he was proceeding in his motor cycle bearing Registration No.TN-45-AB-8120 from his residence at Pondicherry to the Bank. At about 8.45a.m., when he was nearing the bus stop on the eastern side of tourist bungalow in Duraimangalam - Perambalur [East West Road], a Tata Sumo bearing Registration No.TN-39-R-8600 coming from the opposite direction, driven by its driver in a rash and negligent manner at a hectic speed, dashed against the motor cycle. In the impact of the accident, the claimant was thrown out of his vehicle. Even after dashing the motor cycle, the Tata Sumo dashed against a cyclist also and then only stopped.

3.In the accident, the claimant had sustained multiple fractures. The claimant was taken to the Government Hospital, Perambalur and then referred to the District Head Quarters Hospital, Tiruchirapalli. However, in order to have a better treatment, he got admitted at Maruti Hospital, Tennur, Tiruchirapalli.

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

- i.Right thigh upper 1/3 femur
- ii.Right leg both bones
- iii.Right foot MT 4th besides dislocation of distal Phalanx of 5th toe

5.The claimant had undergone a major operation and was inpatient for a period of 57 days and was discharged from the hospital on 23.05.2008. 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 68% permanent disability, the claimant moved the Tribunal seeking compensation of a sum of Rs.25,00,000/- from the first respondent, being the owner of the Tata Sumo, 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 the Doctor, who treated him as P.W.2. The claimant had also marked P.1 to P.13 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 driver 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.25,00,000/- as compensation, the Tribunal taking into consideration various aspects, had fixed a sum of Rs.3,50,000/- as compensation payable to the claimant with interests at the rate of 7.5%. Challenging the same, the claimant had 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 PW2 has given the medical certificate assessing the permanent disability at 68%, the Tribunal has awarded only a sum of Rs.1,02,000/- towards the same. He would further submit that the appellant is a Senior Manager / Branch Manager at Indian Bank, Perambalur Branch by profession and due to the accident, he could not continue his profession as he could not even walk, sit, squat and stand 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.25,00,000/- as compensation, the Tribunal has awarded a meager sum of Rs.3,50,000/-. 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, fixed the permanent disability at 68% and awarded a sum of Rs.1,02,000/-, 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.3,50,000/- under the following heads;

1. Permanent disability	-	Rs.1,02,000/-
2. Medical Expenses	-	Rs.1,77,500/-
3. Transport Charges	-	Rs. 10,000/-
4. Pain and Suffering	-	Rs. 20,000/-
5. Nutrition	-	Rs. 20,000/-
6. For future treatment	-	Rs. 20,500/-
Total		Rs.3,50,000/-

12. On a reading of the judgment of the Tribunal it is seen that though the Tribunal had accepted the contention of the claimant that he had suffered 68% permanent disability, it has chosen to award only a sum of Rs.1,02,000/- towards permanent disability. The injuries suffered by the claimant viz. various fractures, have been spoken to by the Doctor / P.W.2. The respondents have not disputed the injuries suffered by the claimant. Similarly, the resultant disability suffered by the claimant, had restricted his rotation and movement in the right hip and right foot and that the claimant finds it quite difficult to squat, cross his legs, walk with weight and sit down easily are all not disputed by the respondents. In such circumstances, this Court feels it appropriate to grant a further sum of Rs.95,000/- towards permanent disability. Similarly, for the fractures and multiple injuries suffered by the claimant, the sum granted by the Tribunal towards pain and suffering, being a sum of Rs.20,000/- is low. Therefore, this Court feels that a further sum of Rs.30,000/- may be granted to the claimant under the head pain and suffering.

13. Accordingly, this appeal stands allowed, by enhancing the compensation to a sum of Rs.4,75,000/- under the following heads;

1. Permanent disability	-	Rs.1,97,000/-
2. Medical Expenses	-	Rs.1,77,500/-
3. Transport Charges	-	Rs. 10,000/-
4. Pain and Suffering	-	Rs. 50,000/-
5. Nutrition	-	Rs. 20,000/-
6. For future treatment	-	Rs. 20,500/-
Total		Rs.4,75,000/-

14. Accordingly, the respondents are directed to deposit the entire award amount including the enhanced sum, if any already deposited along with accrued interest. It is needless to state that on such deposit being made, the claimant is entitled to withdraw the same. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sri

To

1. The Motor Vehicles Accident Claims Tribunal,
Principal District Judge,
Perambalur.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.59181

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.59202

C.M.A. NO.3742 OF 2010

SKV(CO)
CA(11/12/2015)

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