

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-10-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

C.M.A. No. 893 of 2009

Govindasamy

.. Appellant/Petitioner

Versus

1. Magudeswaran

2. K. Nallasamy

3. The New India Assurance Co., Ltd.,
No.12, New Hospital Road
Gopichettipalayam, Erode District.. Respondents/Respondents

Appeal filed under Section 173 of The Motor Vehicles Act 1988 against the Order dated 29.11.2008 passed in M.C.O.P. No. 41 of 2008 on the file of The Motor Accident Claims Tribunal cum Sub Court, Bhavani

For Appellant : Mr. C. Kulanthaivelu
For Respondents : No appearance for RR1 and 2
Mrs. R. Srividya for R3

JUDGMENT

The claimant in M.C.O.P. No. 41 of 2008 on the file of The Motor Accident Claims Tribunal cum Sub Court, Bhavani is the appellant in this appeal.

2. According to the claimant, on 08.10.2007, at about 09.30 am, when he was riding the two wheeler - TVS XL Super bearing Registration No. TN-36-X-2679 from Anthiyur to Appakoodal Main Road, near Thavittupalayam Muthumariamman temple, the tanker lorry bearing Registration No. TCX 7277 was driven by the first respondent in a rash and negligent manner and hit the claimant from behind. In the impact, the claimant sustained grievous injuries all over his body. The injuries sustained by the claimant are in the nature of a lacerated crush injury in the lower 1/3rd of left leg and ankle, lacerated injury on his forehead, abrasion in the right fore arm and abrasion in the left knee. The claimant was immediately taken to Government Hospital, Anthiyur from where he was referred to L.K.M. Hospital, Erode for better treatment. The claimant was admitted as an in-patient for one month and even after discharge, he was taking treatment for the injuries. According to the claimant, at the time of accident, he was 45 years old and was earning a sum of Rs.5,000/- per month by doing agricultural and handloom weaving work. Due to the injuries, the claimant could not walk, sit and stand for a long

time or he could lift any weight. On account of the injuries sustained in the accident, the applicant could not do his normal work, as before. Therefore, the claimant has filed the claim petition claiming a sum of Rs.3,00,000/- as compensation.

3. The third respondent/insurance company resisted the claim petition by contending that the owner of the vehicle failed to furnish the information relating to the accident as per the policy condition, hence, the claim petition is not maintainable as against the insurance company. Further, at the time of accident, the first respondent did not possess a valid licence to drive the vehicle. The injuries allegedly sustained by the claimant are not admitted. The claimant has to prove his monthly income and occupation. The compensation amount claimed by the claimant is not proportionate to the nature of injuries sustained by him.

4. The Tribunal, considered the oral and documentary evidence, especially the disability assessed by the Doctor, PW2, at 35%. However, having regard to the deposition of PW2, Doctor and the would certificate, Ex.P5, the Tribunal has taken 30% as permanent disability of the claimant and awarded a sum of Rs.45,000/-. In other words, a sum of Rs.1,500/- per percentage of disability was awarded by the Tribunal. The Tribunal also awarded Rs.25,000/- towards pain and suffering. Even though the claimant produced medical bills under Ex.P9 and P10, the Tribunal disallowed certain items of medicines as not related to the treatment extended to the claimant and ultimately awarded Rs.41,646.93 towards medical expenses. The Tribunal has further awarded a sum of Rs.2,800/- towards transportation expenses. The Tribunal also awarded a sum of Rs.2,000/- towards Nutrition. Thus, a total sum of Rs.1,16,446/- rounded off to Rs.1,16,450/- was awarded as compensation to the claimant by the Tribunal. This amount, according to the claimant, is not in consonance with the nature of injuries sustained by him. Therefore, the claimant has come forward with the present claim petition.

5. The learned counsel appearing for the appellant would contend that the Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability instead of awarding only Rs.1,500/- per percentage of disability. The learned counsel for the appellant further contended that the amount awarded under the heads such as pain and suffering, nutrition and transportation are very low. It is further contended that the Tribunal ought to have awarded some amount towards loss of income inasmuch as the claimant could not attend to his work atleast for about six months and he was deprived of his earnings during this period. Therefore, the learned counsel for the appellant prays this Court to enhance the compensation amount awarded by the Tribunal.

6. On the contrary, the learned counsel for the insurance company would contend that in a case of this nature i.e., injury, the amount of Rs.1,16,450/- awarded by the Tribunal is excessive. In any event, the amount awarded by the Tribunal

does not call for any interference by this Court and she prayed for dismissal of this appeal.

7. I heard the counsel for the appellant as well as the learned counsel for the third respondent/insurance company. At the outset, the insurance company admits their liability to pay the compensation amount. This appeal is filed by the claimant seeking enhancement of the compensation amount.

8. It is seen from the records that the claimant was admitted as an in-patient for about a month. The claimant sustained compound communicated shattered fracture in both the legs which resulted in lowering of his legs in the region of 1/3". At the time of accident, the claimant was 45 years and he engaged himself as an agriculturist and as a handloom weaver to eke out his livelihood. By reason of the accident, the claimant could not have attended to his work atleast for three months. According to the claimant, by reason of the injuries sustained by him in the accident, he could not walk, sit or stand for a long time. The Doctor, PW2, who was examined before the Tribunal has assessed the disability of the claimant at 35%, however, the Tribunal has taken only 30% as disability to award compensation. The accident occurred on 08.10.2007, while so, this Court is of the view that the Tribunal ought to have awarded atleast a sum of Rs.2,000/- per percentage of disability. Further, the Tribunal has not awarded any amount towards loss of income in favour of the claimant. Having regard to the above factors, this Court is inclined to enhance the compensation awarded to the claimant at Rs.1,75,000/- under the following heads:-

Disability (Rs.2,000/- per percentage of disability)	Rs.60,000.00
Pain and Suffering	Rs.35,000.00
Medical Expenses (as awarded by the Tribunal)	Rs.41,647.00
Nutrition	Rs.10,000.00
Transportation Expenses	Rs.10,000.00
Loss of income for three months @ Rs.3,000/- pm	Rs. 9,000.00
Attendant Charges	Rs.10,000.00

	Rs.1,75,647.00
Rounded off to	Rs.1,75,000.00

9. In the result, the Civil Miscellaneous Appeal is allowed and the third respondent/Insurance Company is directed to pay a sum of Rs.1,75,000/- as compensation to the claimant/appellant. No costs. The Insurance company is directed to deposit the compensation amount, as determined in this appeal, within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited, with interest as awarded by the Tribunal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh
To

The Motor Accidents Claims Tribunal
cum Sub Court, Bhavani

copy to:
The Section Officer,
VR Section,
High Court, Madras

+1 cc to M/S.R.Sreevidhya Advocate sr.54996
+1 cc to M/S.C.Kulandaivelu Advocate sr.55082

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