

In the High Court of Judicature at Madras

Date :: 24.08.2015

Coram ::

The Hon'ble Mr. Justice R. Sudhakar

C.M.A. No: 3265 of 2004

Lion Azeez @ Azeezullah
S/o. Budemiyam
No: 18, Kamal Street
Palakodu Town & Post
Palakodu Taluk
Dharmapuri District.

... Appellant /Claimant

-vs-

1. S. Ashok Kumar
S/o. Chandiramma
Parirappa Colony Road
Krishnagiri Town & Post
Dharmapuri District.

2. D.T. Parthasarathy
No: 960 20th Main Road, 30th Cross
4th Block, Jaya Nagar
Bangalore - 41.
Karnataka State.

3. Oriental Insurance Co. Ltd.
represented by Branch Manager
No: 94, 1st floor, Mysore Road
Opp. To Police Parade Grounds
Bangalore - 18.
Karnataka State.

... Respondents

Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree passed in M.C.O.P. No: 75 of 2010 dt. 31.03.2004 on the file of the learned Motor Accidents Claims Tribunal (Sub Court) Hosur.

For Appellant :: M/s N.Nissar Ahmed

For 3rd respondent :: Mr. J. Chandran

J U D G M E N T

This is an appeal filed by the claimant seeking enhancement of compensation.

2. The appellant Lion Azees @ Aseezullha is a seasonal merchant of Tamrind and Mango and is also a transport owner. On the date of accident viz. 29.06.1999, the appellant, a resident of Palakodu Taluk, Dharmapuri District, came to Hosur by bus to visit a Mango field in connection with his business. On request by the appellant, his friend one Mr. Chandrasekar offered to ride the two wheeler to Athipalli. The appellant travelled with his friend Chandrasekar as a pillion rider in his motor cycle bearing Registration No: TN 29 KJ 5125 (Hero Honda). At about 3.20 p.m. while they were proceeding near ESI Hospital at Sipcot Industrial Complex, Mookandapalli between Hosur and Bangalore High Road, the bus bearing Registration No: KA 05 A 1341 belonging to the 2nd respondent herein and driven by the 1st respondent in a rash and negligent manner dashed on the two wheeler. The bus was insured with the 3rd respondent herein. Due to the impact of the clash, the appellant sustained a crush injury on the lower part of the right thigh and the upper part of the leg. The appellant was first taken to the Government Hospital, Hosur, and then to St John Medical College Hospital, Bangalore and then he was referred to HOSMAT Hospital, Bangalore. During treatment, the appellant's right leg was removed at HOSMAT Hospital, Bangalore and again a surgery was done at SKS Hospital, Salem. According to the claimant he is still taking treatment for his injuries suffered in the accident. Hence, the appellant claimed a sum of Rs. 10,00,000/- towards compensation.

3. In support of the claim, the claimant examined himself as P.W.1. One of the Doctors who treated the claimant was examined as P.W.2. P.W.3 a friend of the claimant was examined to prove claimant's income and P.W.4 - One Mr. Chandrasekar, a friend of the claimant in whose two wheeler the claimant travelled as a pillion rider at the time of accident was examined as eye witness. The claimant had also marked Exs. P-1 to P-22, the details of which are as follows:-

- Ex.P-1 is the copy of FIR
- Ex.P-2 is the copy of accident register given by Govt. Hospital, Hosur.
- Ex.P-3 is the copy of accident register given by HOSMAT Hospital, Bangalore.
- Ex.P-4 is the copy of the insurance policy
- Ex.P-5 series are the medical bills
- Ex.P-6 is the copy of the prescription
- Ex.P-7 series are the prescriptions

Ex.P-8 series are the medical bills

Ex.P-9 series are the medical records issued
by HOSMAT Hosp. Bangalore

Ex.P.10 series are the medical records

Ex.P.11 Discharge summary of SKS Hospital, Salem

Ex.P.12 Statement showing the medical expenditure

Ex.P.13 Cardiology Report

Ex.P.14 Medical Report

Ex.P.15 Disability certificate issued for the claimant

Ex.P.16 X-ray report

Ex.P.17 Certificate issued by the Lions Club

Ex.P.18 Driving licence of P.W.4 - chandrasekar

Ex.P.19 Transport Bills

Ex.P.20 Statement showing the amount spent
towards transportation

Ex.P.21 Medical bills

Ex.P.22 X- rays

Neither any witness was examined nor any document was marked on behalf of the respondents before the Tribunal. However, the claim was resisted by the 2nd respondent / owner of the bus bearing Registration No: KA 05 A 1341 and 3rd respondent / insurer of the said bus by filing counter statements.

4. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that F.I.R. was registered against the driver of the bus for rash and negligent driving of the vehicle, came to conclusion that the 1st respondent was responsible for the accident and consequently liability was fixed on the respondents 2 and 3 herein, as owner and insurer of the vehicle involved in the accident respectively.

5. However, though the claimant had restricted his claim to a sum of Rs. 10,00,000/- in the claim petition, based on the oral and documentary evidence, the Tribunal had granted only a sum of Rs.3,60,000/- as total compensation with interest at 9% per annum and, hence, the present appeal by the claimant. The amount granted under the various heads are as follows :-

Sl.No	Head	Amount granted by the Tribunal
1	Towards permanent disability - 70%	Rs. 70,000/-
2	Transportation	Rs. 10,000/-
3	Medical expenses	Rs. n1,90,000/-
4	Towards Pain & Suffering	Rs. 60,000/-

Sl.No	Head	Amount granted by the Tribunal
5	Towards loss of earning capacity	Rs. 20,000/-
6	For nutritious food	Rs. 10,000/-
	Total	Rs .3,60,000/-

6. The fact that the claimant was badly injured in the accident in question is not in dispute. The respondents have not seriously disputed the manner in which the accident had occurred. A perusal of the impugned judgment shows that the Tribunal had accepted the factum of the claimant having suffered grievous injuries in the accident. But, since the claimant had not filed any documents in support of his claim that he was earning a sum of Rs. 15,000/- per month from his business and as he has not filed any income tax returns, the Tribunal disbelieved the claimant's statement as to his income. On going through the medical records produced by the claimant, it is seen that he has taken treatment for 45 days as in-patient and that his right leg was amputated. The permanent disability suffered by the claimant is stated to be 70%. The Doctor was examined as P.W.2 to speak about the disability suffered by the claimant. The documents marked before the Tribunal also reveal the fact that the claimant had undertaken treatment initially at Government Hospital, Hosur, and then had taken further treatments at St. Johns Medical College Hospital, Bangalore, HOSMAT Hospital, Bangalore and lastly at S.K.S. Hospital, Salem. According to the claimant, he is still undertaking treatment for the injuries suffered.

7. Considering the aforesaid facts, this Court is of the opinion that, in addition to the sum granted by the Tribunal, a sum of Rs. 50,000/- can be granted to the claimant for the mental agony he has suffered. Similarly, since the claimant has lost his right leg due to the injuries suffered by him, he could not have moved around without an assistance of an attendant. Therefore, a sum of Rs. 20,000/- is granted towards attendant charges. For the disability of 70% suffered by the claimant, the Tribunal has granted a sum of Rs. 70,000/- as compensation. In the decision rendered in the case of Sankara Subbu vs. Selvi and other, [C.M.A. (MD) No: 538 of 2009], this Court has held that,

" 10. ... While the method adopted by the Tribunal for computing the compensation is not approved, then it has to be found out, what is the compensation payable to the appellant. In this regard, this Court has categorically held in Managing

Director, Tamil Nadu State Transport Corporation (Division-2) Ltd., Dharmapuri, vs. J. Senthil Kumar reported in 2008 (1) TN MAC 499 and in Metropolitan Transport Corporation Ltd. vs. N. Shanmugam reported in 2008 (NOC) 2467 (MAD) that in the case of injuries relating to partial and permanent disablement, the compensation could be arrived at by granting Rs.1000/- to 2000/- for each percentage of disability depending upon various circumstances.

11. The following passage from Metropolitan Transport Corporation Ltd. vs. N. Shanmugam reported in 2008 (NOC) 2467 is also extracted hereunder :-

" Motor Vehicles Act (59 of 1988), S.168 - Assessment of Compensation - Injuries resulting in permanent disability - Awarding lump sum compensation at uniform rate irrespective of age of injured - Tantamounts to treating in unequals equally - compensation to be awarded in case of permanent disability may range from Rs.1,000/- to Rs.2,000/- per one percentage disability - Maximum rate shall be applicable in case of young people - Minimum rate shall be applicable in case of elders. "

Following the said decision, the sum granted by the Tribunal towards permanent disability is enhanced from Rs. 70,000/- to a sum of Rs.1,40,000/-.

8. In all, the total compensation awarded by the Tribunal to the claimant is enhanced from a sum of Rs. 3,60,000/- to a sum of Rs.5,00,000/-. The enhanced sum will bear interest at the rate of 7.5% from the date of claim petition till deposit. The respondents are directed to deposit the enhanced amount in three months. On deposit, the claimant is permitted to withdraw the same. The Civil Miscellaneous Appeal stands allowed to the extent indicated above. There shall be no orders as to the costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

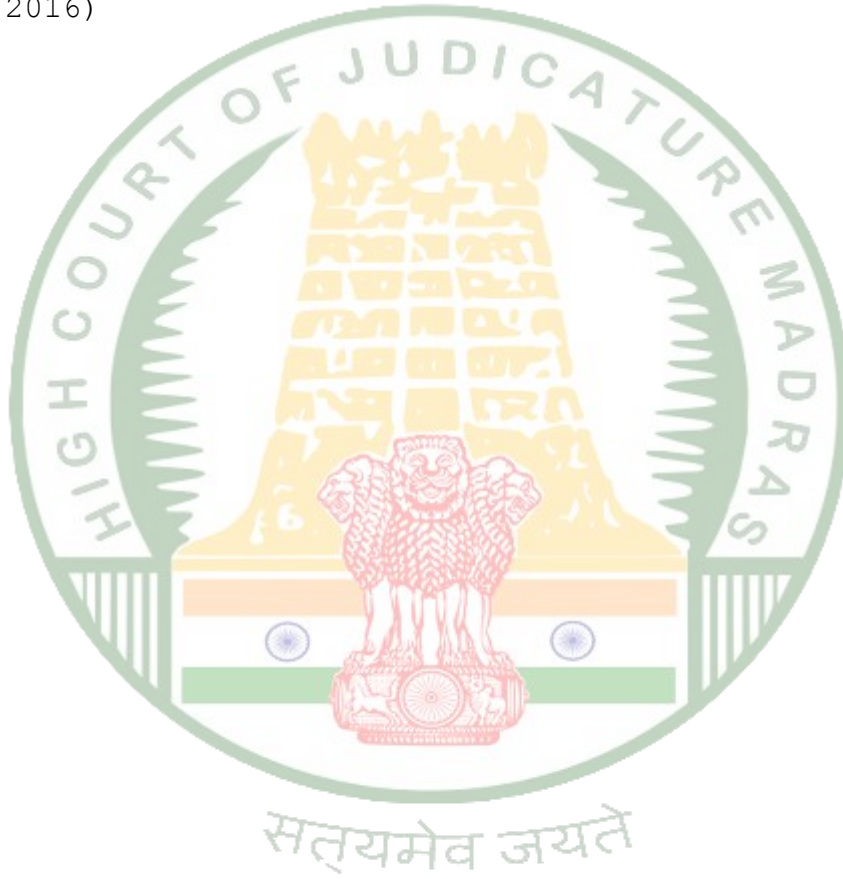
To

The Presiding Officer,
Motor Accidents Claims Tribunal,
Sub-Ordinate Judge,
Hosur.

1cc to J.Chandran, Advocate sr.45613

C.M.A. No: 3265 of 2004

ppa (CO)
srg (15/03/2016)



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