

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.1975 of 2016

M.Rajendran

.. Appellant/Petitioner

Vs

1.S.Meivel

2.The United India Insurance Co. Ltd.,
No.134, Greens Road, Silingi Building,
IV - Floor, HUB, Chennai - 6. ... Respondents/Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.06.2014, made in MCOP.No.122 of 2012, on the file of the Sub-Court Judge, Thiruttani/Motor Accident Claims Tribunal, Thiruttani.

For appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For R2 : Mr.M.Krishnamoorthy
For R1 (exparte)

JUDGMENT

Aggrieved by the award dated 20.06.2014, made in MCOP.No.122 of 2012, on the file of the Sub-Court Judge, Thiruttani/Motor Accident Claims Tribunal, Thiruttani, the appellant/claimant has preferred the present appeal seeking for enhancement of the compensation.

2. On 30.06.2006 at about 11.45 p.m., while the claimant was walking on the left side of the Chittoor to Puttur road, Karvet Nagar, a tanker lorry bearing Registration No.KA-21-B-2929 belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner, dashed against the claimant, due to which, he sustained multiple injuries all over his body. Immediately after the accident, he was taken to SVRR Hospital, Tirupathi, and after a

period of two months treatment as inpatient, he was discharged on 30.08.2006. Subsequently, he filed a claim petition claiming a sum of Rs.2,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal, by holding that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent, awarded a sum of Rs.1,75,790/- as compensation to the claimant with interest at 7.5% per annum from the date of petition. Aggrieved by that award, the claimant has filed the present appeal for enhancement. Though in the claim petition he claimed a sum of Rs.2,00,000/- as compensation, now, pending appeal, he filed a petition in M.P.No.1 of 2015 seeking permission to enhance the claim amount from Rs.2,00,000/- to Rs.4,00,000/- and this Court, by order dated 24.08.2015, ordered the said petition permitting the claimant to enhance the compensation to Rs.4,00,000/-

4. Learned counsel appearing for the appellant / claimant submitted that while awarding compensation towards disability, the Tribunal ought to have fixed Rs.3,000/- per percentage of disability, instated of Rs.2,000/-, in the light of the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. It is his further contention that the Tribunal, while calculating compensation towards loss of earning, ought to have awarded towards loss of earning by calculating 6 months of his income as he took treatment in two spells between 01.07.2006 and 30.08.2006, and again from 15.02.2011 to 16.02.2011 for fixation of K.Wire. He further submitted that the amount awarded by the Tribunal under various other heads are also very low and meagre and therefore, he sought for enhancement on the other heads also.

5. Learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. It is not in dispute that the claimant was working as a daily wager in MRF Company and he was aged about 45 years at the time of accident. He has also claimed to have earned a sum of Rs.200/- per day on daily wage basis. From the discharge summaries, marked as Exs.P2 and P3 issued by the SVRR Hospital, Tirupathi and Government General Hospital, Chennai, respectively, it is seen that the claimant had suffered the following injuries:

Crush injury on the right ankle
Fracture superamalleolar right leg
Avulsion fracture Navicular
Loss of skin
Fixation of K-wire

Finally, the Doctor-P.W.2, who examined the claimant, deposed that the claimant sustained crush injury on his right leg, for which K-wire was also fixed and that mussels were removed on his right leg. The Doctor has also issued the disability certificate, marked as Ex.P9, assessing 65% disability. On examining the disability certificate, the Tribunal, by fixing Rs.2000/- per percentage of disability, has awarded a sum of Rs.1,30,000/- (65×2000) towards disability, which needs modification, in the light of the judgment of the this Court in G.Ramesh's case (cited supra), wherein this Court, by taking note of the the present state of economy and the rising prices, has fixed fixed Rs.3000/- towards per percentage of disability. Accordingly, this Court hereby awards a sum of Rs.1,95,000/- (65×3000) towards disability.

8. It is also seen that initially the claimant was admitted in SVRR Hospital, Tirupathi, from 01.07.2006 to 30.08.2006 for undergoing various surgeries, and thereafter, for fixation of K-Wire on his right leg, he was admitted in the Government General Hospital, Chennai, from 15.02.2011 to 16.02.2011. Therefore, considering the nature of injuries sustained by the claimant and also taking note of the deposition of the Doctor-P.W.2 that mussels were removed on the right leg of the claimant, in my view, claimant would not have attended his work for about six months, as he was working as coolie at MRF Company, which would require more of physical endurance to do his work, therefore, this Court hereby awards a sum of Rs.1,80,000/- (3000×6) towards loss of earning.

9. Apart from the above, the Tribunal has also awarded a sum of Rs.5,000/- each towards transportation and extra nourishment and a sum of Rs.20,000/- towards pain and suffering. Considering the nature of surgeries and also fixation of K-wire on the right leg of the claimant and also taking note of the fact that the claimant was admitted in the hospital for about 63 days in two spells as stated above, this Court hereby awards a sum of Rs.15,000/- towards transportation, Rs.25,000/- towards extra nourishment and Rs.30,000/- towards pain and suffering. As per the medical bills, marked as Ex.P4, the Tribunal has awarded a sum of Rs.3790/- towards medical expenses and the same is hereby confirmed.

10. In fine, the second respondent Insurance Company is directed to deposit the entire award amount of Rs.2,86,800/- (round off figure), along with interest as ordered by the Court below, if not already deposited if any, to the credit of

M.C.O.P.No.122 of 2012, on the file of the Sub Court, Thiruttani (Motor Accidents Claims Tribunal), within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant/appellant herein is permitted to withdraw the entire amount along with the accrued interest lying in the said credit. The claimant is directed to pay the necessary additional Court fee for the enhanced award amount. Accordingly, the Civil Miscellaneous Application is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rkm

To

1. Sub Court, (Motor Accidents Claims Tribunal),
Thiruttani.

+1 cc to M/s.Anand and Suryas Advocate sr 59474

+1 cc to Mr.M.Krishnamoorthy Advocate sr 59509

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C.M.A. No.1975 of 2016

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