

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3601 of 2011

Velusamy

... Appellant/Petitioner

Versus

1.G.Sivasubramani

2.M.Viswanath

(Notice may be dispensed with since the respondents 1 and 2 were set exparte before the Tribunal)

3.The New India Assurance Co. Ltd.,
45, D.B.Road, R.S.Puram,
Coimbatore-2.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 21.01.2010 made in M.C.O.P.No.149/2009 on the file of the Motor Accidents Claims Tribunal cum Sub Court, Bhavani.

For Appellant : Mr.C.Kulanthaivel

For Respondents: R1 & R2 - exparte
Mr.J.Chandran for R3

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the correctness of the impugned award dated 21.01.2010 made in M.C.O.P.No.149/2009 on the file of the Motor Accidents Claims Tribunal cum Sub Court, Bhavani.

2.It is the case of the claimant that on 11.01.2009 at about 07.00 p.m., when the appellant/claimant was riding the Yamaha Motor Cycle, bearing Registration No.TN-27/M-8523 from Anthiyur to Bhavani Main Road, an Omni Van bearing Registration No.TN-37/AW-0787, which was driven by the first respondent, in a rash and negligent manner, hit against the appellant/ claimant. Due to the impact, the said appellant/claimant sustained grievous

injuries all over the body. According to the appellant/claimant, the accident was happened due to the rash and negligent driving of the driver of the van/first respondent herein.

3.Learned counsel appearing for the appellant/claimant would submit that when the claimant had suffered multiple injuries all over his body, which has been certified as 36% disability by P.W.2/Doctor, the learned Tribunal has miserably failed to award compensation under the heads 'loss of avocation' and 'future medical expenses'. Adding further, he would submit that when after the unfortunate accident took place on 11.01.2009, caused by the offending van driver/the first respondent herein, it is difficult for the claimant to do his work as he did before the accident and the said Doctor had also issued the disability certificate at 36%, marked as Ex.P12, which clearly established that the claimant had sustained grievous injuries, the learned Tribunal ought not to have fixed Rs.1,500/- per percentage instead of fixing Rs.3,000/-. He would further submit that taking note of the present escalation of prices, Rs.3,000/- per percentage of disability has to be fixed, as per ratio laid down by this Court in the case of National Insurance Company v G.Ramesh reported in 2013 (2) TN MAC 583. Therefore, he prays for reasonable enhancement.

4.Opposing the above contentions, learned counsel appearing for New India Assurance Co. Ltd./third respondent herein would submit that only after examining the evidence adduced by the said Doctor and also the disability certificate marked as Ex.P12 and also considering Ex.P5/wound certificate, the learned Tribunal has rightly fixed Rs.1,500/- per percentage of disability. Hence, he prays for dismissal of the appeal.

5.But this Court is not able to find any merit on the contentions made by the learned counsel for New India Assurance Co. Ltd./the third respondent herein. The reason is that when the claimant had sustained injuries on his right hand elbow, right ear and right leg knee, which was supported by the evidence of P.W.2/Doctor along with the disability certificate dated 08.01.2010, certifying 36% disability, marked as Ex.P12 and wound certificate dated 28.01.2009, marked as Ex.P.5, the learned Tribunal, in my considered opinion, ought not to have fixed Rs.1,500/- per percentage of disability, as the same is not in consonance with the ratio laid down by this Court in the case of National Insurance Company Ltd. v. G.Ramesh and another reported in 2013 (2) TN MAC 583. The relevant portion of the said judgment is given as under:

"6.Considering the fact that the claimant is a youngster, aged 23 years, having suffered fracture of tibia and fibula bones and taking note of the fact that chances of recovery are bright at such age, this Court

is inclined to interfere with the award of the Tribunal. However, this Court is of the view that acceptance of a sum of Rs.2,000/- per percentage of disability is incorrect, given the present day cost of living. It would be more appropriate to accept Rs.3,000/- per percentage of disability."

6. In the light of the above judgment, Rs.1,500/- per percentage of disability fixed by the learned Tribunal, is modified at Rs.3,000/- per percentage of disability, which comes Rs.1,08,000/- (36 x 3000). Therefore, Rs.54,000/- awarded by the learned Tribunal towards permanent disability is modified at Rs.1,08,000/-. When an injured person was taking treatment for 18 days, it is not known how the Tribunal has fixed only Rs.2,000/- towards nutrition and Rs.1,000/- towards transportation. Therefore, it is appropriate to fix a sum of Rs.10,000/- towards nutrition and a sum of Rs.10,000/- towards Transportation and the same is fixed. Moreover as I mentioned above, when he was taking treatment for a long time, attender may be required, but, no amount whatsoever has been fixed by the learned Tribunal under the head 'attender charges'. Accordingly, a sum of Rs.10,000/- is fixed towards attender charges.

7. When the claimant was taking treatment for four months as in-patient and out patient, the learned Tribunal has not fixed any amount during the period of treatment under the head 'loss of income'. It is not in dispute that the claimant, aged about 29 years, was earning a sum of Rs.4,500/- per month by doing his occupation as Sugarcane cutting. As it is well settled legal position that even in the absence of any document to prove the monthly income, a reasonable amount has to be fixed as notional monthly income. In the present case, the claimant has not claimed any unreasonable monthly income. Hence, this Court is inclined to fix Rs.4,500/- as notional monthly income of the claimant and the same is fixed. Accordingly, a sum of Rs.18,000/- (4500 x 4) is arrived at towards loss of income during the treatment period of four months. When it was proved before the learned Tribunal that the claimant was taking treatment for about 18 long days from 11.01.2009 to 28.01.2009 in Dr.MAN Loganathan Hospital at Bhavani, the learned Tribunal has not awarded any amount towards loss of amenities. Accordingly, this Court is inclined to fix a sum of Rs.10,000/- towards loss of amenities and the same is fixed. The medical bills which were marked as Ex.P9, clearly show that the claimant had spent a sum of Rs.32,416/- towards medical expenses. The learned Tribunal has awarded a sum of Rs.32,416/- towards medical expenses and a sum of Rs.25,000/- towards pain and suffering. With regard to the head 'pain and suffering' and 'medical expenses', no interference is called for, as they are seem to be reasonable. The modified compensation as per the

above discussion are as follows:

36% disability Rs.3000x36	...	Rs. 1,08,000/-
Nutrition	...	Rs. 10,000/-
Transportation	...	Rs. 10,000/-
attender charges	...	Rs. 10,000/-
Loss of income	...	Rs. 18,000/-
Pain and sufferings	...	Rs. 25,000/-
Medical expenses	...	Rs. 32,416/-
X-rays	...	Rs. 160/-
Loss of amenities	...	Rs. 10,000/-

Total	...	Rs. 2,23,576/-

8.It is brought to the notice of this Court that the Insurance Company has deposited the award amount as ordered by the Tribunal and the same has also been withdrawn by the claimant. Therefore, the Insurance Company/ third respondent herein is directed to deposit the enhanced amount Rs.1,08,996/- with interest at 9% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the modified amount, on making proper application.

9.Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal
cum Sub Court, Bhavani.

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

+1cc to Mr.C.Kulanthaivel, Advocate Sr.54266
+1cc to Mr.J.Chandran, Advocate Sr.53688

C.M.A. No.3601 of 2011

gj[co]
srg 23/01/2017