

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.277 of 2014

J.Rajaganapathy

.. Appellant/Claimant

-vs-

1. P.Mani

2. M/s United India Insurance Co.Ltd.,
146 N, Kumar Complex
Tiruchengode
Salem District

.. Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.9.2013 made in M.C.O.P.No.1381 of 2009 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.2, Salem.

For Appellant :: Mr.R.Ezhilarasan

For Respondents :: Mr.T.Ravichandran for R2
No appearance for R1

JUDGMENT

The injured appellant/claimant, aged about 34 years, made a claim before the Tribunal for payment of compensation of Rs.10,00,000/- on the ground that while he was driving the bus bearing Registration No.TN 30 N 0317 belonging to the Tamil Nadu State Transport Corporation Limited, Erumapalayam Second Branch, Salem Division from Erode towards Salem on 1.12.2008 at about 3.15 A.M., near Uthama Cholapuram bus stop, another private bus bearing Registration No.TN 52 N 2227 belonging to the first respondent came from the opposite direction, namely, from Salem to Erode and hit against the bus driven by the appellant, as a result of the head-on-collision, apart from the injuries sustained by the occupants of both the buses, he had sustained the following injuries:-

- "1. Lacerated wound 7 x 5 cms over anterior aspect of (L) leg exposing tibia & fibula.
2. Lacerated wound extending upto exterior tendrn and dorsum of ankle region 5x4 cms size (L) leg.
3. Lacerated wound lower ward (l) leg 4x4 cms.
4. Abrasion anterior aspect left low thigh 5x5 cms.
5. Abrasion 25x10 cm over post aspect of ® forearm.
6. Lacerated wound over the ® thigh 25x10 cms.
7. Severe tender over (L) hand index finger and multiple injuries all over the body."

Immediately he was rushed to Sri Vinayaga Mission Hospital at Salem and after giving first-aid, he was shifted to Gobi Memorial Hospital at Salem fur better treatment. Since the appellant sustained several injuries over his left leg, right thigh and right foma, he was taking treatment in the said hospital from 1.12.2008 till 24.12.2008. After discharge, again he was readmitted in the same hospital and given treatment on 1.4.2009 and 2.4.2009. Since metal rods were also fixed on his left leg for speedy union of fracture on left tibia and interlocking nailing was also done, he was again admitted in the said hospital on 24.4.2009 and after treatment, he was discharged only on 29.4.2009. However, the Tribunal has awarded a compensation of Rs.2,72,200/- under the following heads:-

41% permanent disability(Rs.1500x41%)-	Rs.	61,500/-
Pain and Suffering	-	Rs. 10,000/-
Medical expenses	-	Rs.1,81,210/-
Transportation	-	Rs. 2,000/-
Nourishment	-	Rs. 3,000/-
Attender charges	-	Rs. 3,000/-
Damages to clothes	-	Rs. 750/-
Loss of income for a period of four months of treatment (Rs.2685x4)-	Rs.	10,740/-

Total	Rs.2,72,200/-
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Aggrieved by the lesser amount of compensation, the appellant/claimant has filed the present appeal for enhancement.

2. Learned counsel for the appellant has submitted that when the injured was taking treatment in two hospitals viz., Sri Vinayaga Mission Hospital, Salem and subsequently in Gobi Memorial Hospital, Salem from 1.12.2008 till 24.12.2008 and metal rods were also fixed on his left leg for speedy union of

fracture on left tibia and interlocking nailing was also done in his left leg and the doctor, who was examined as P.W.2, has also reasonably assessed the partial permanent disability at 41% considering the injuries sustained by the claimant, the Tribunal, after accepting the percentage of disability at 41%, has wrongly fixed only a sum of Rs.1,500/- per percentage of disability, instead of Rs.3,000/- per percentage of disability without taking into account the injuries sustained by the claimant. Moreover, when the injured claimant was all along taking treatment and undergone a surgery for removal of the interlocking nailing, the Tribunal has erroneously fixed only a sum of Rs.10,000/- towards pain and sufferings, which requires interference. Further, with regard to the expenses towards transportation, nourishment and attender charges, only a nominal amount of Rs.2,000/-, Rs.3,000/- and Rs.3,000/- respectively has been awarded. Hence, under these heads also, some reasonable amounts have to be awarded, he pleaded.

3. Refuting the above contentions, the learned counsel for the second respondent insurance company urged this Court to dismiss the appeal, on the ground that the Tribunal, accepting 41% of disability as assessed by the doctor- P.W.2, has reasonably awarded a sum of Rs.61,500/- at the rate of Rs.1,500/- per percentage of disability. This apart, without any evidence to the contrary, a sum of Rs.10,740/- has been awarded towards loss of income for a period of four months at the rate of Rs.2,685/- per month. When a sum of Rs.1,81,210/- has been also awarded towards the medical expenses, it is not open to the claimant to come to this Court seeking enhancement, since the appellant's case has been blown out of proportion as though he sustained seven grievous injuries, when the fact remains that only one injury was grievous in nature and others were only simple in nature. Therefore, the award of the Tribunal does not call for interference/enhancement.

4. Heard the learned counsel for the parties.

5. As mentioned above, when the appellant/injured had sustained seven injuries, out of which one happened to be grievous in nature, the discharge summary, Ex.P5 clearly shows that he was taking treatment as an inpatient from 1.12.2008 till 24.12.2008 in two hospitals, namely, Sri Vinayaga Mission Hospital, Salem and at Gobi Memorial Hospital, Salem. In the meanwhile, on 21.12.2008, the injured had also undergone a surgery for interlocking nailing for speedy union of his fracture on his left tibia with the fixation of metal rods. Subsequently, he was re-admitted on 1.4.2009 and discharged on 2.4.2009. Thereafter, he was re-admitted on 24.4.2009 for removal of the interlocking nailing and again discharged only on 29.4.2009. Considering these aspects only, the doctor, who was examined as P.W.2, has correctly assessed the disability at 41%.

However, the Tribunal, though fixed the disability at 41% as assessed by the doctor, ought to have awarded a sum of Rs.3,000/- per percentage of disability instead of Rs.1,500/-. Therefore, keeping in mind the escalation in the prices of essential commodities, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability for the 41% disability sustained by the injured claimant.

6. Now coming to the award of compensation towards pain and sufferings, as noted above, totally on three occasions, the injured had taken treatment as an in-patient, apart from the two surgeries performed on the injured for fixation and removal of the interlocking nailing. Hence the award of Rs.10,000/- under this head by the Tribunal is unacceptable. Accordingly, a sum of Rs.1,00,000/- is awarded towards the pain and sufferings. Considering the facts of this case, this Court is also inclined to award a sum of Rs.15,000/-, Rs.20,000/- and Rs.15,000/- towards the transportation, nourishment and attender charges respectively, instead of the nominal amounts of Rs.2,000/-, Rs.3,000/- and Rs.3,000/- awarded by the Tribunal. This Court also sustains the award of compensation towards medical expenses, damages to clothes and the loss of income for a period of four months as fixed by the Tribunal.

7. In the result, the civil miscellaneous appeal stands allowed and the appellant/injured is entitled to a total compensation of Rs.4,65,700/- as detailed below:-

41% permanent disability (Rs.3000x41%)	-	Rs.1,23,000/-
Pain and Sufferings	-	Rs.1,00,000/-
Medical expenses	-	Rs.1,81,210/-
Transportation	-	Rs. 15,000/-
Nourishment	-	Rs. 20,000/-
Attender charges	-	Rs. 15,000/-
Damages to clothes	-	Rs. 750/-
Loss of income for a period of four months of treatment (Rs.2685x4)	-	Rs. 10,740/-

Total Rs.4,65,700/-

The said amount shall carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation payable by the second respondent as the insurer of the offending vehicle.

8. It was represented that a sum of Rs.2,72,200/- together with interest was already deposited and the same was also withdrawn by the claimant. Therefore, the second respondent is hereby directed to deposit the balance amount of compensation representing the enhancement along with interest to the credit

of the M.C.O.P.No.1381 of 2009 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.2, Salem within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount along with accrued interest by moving appropriate application before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge No.2
Motor Accident Claims Tribunal
Salem

copy to

The Section Officer
VR Section High Court Madras

+1 cc to Mr.T.Ravichandran Advocate sr 64239

+1 cc to Mr.R.Ezhilarasan Advocate sr 64285

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