

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.681 of 2014

Kathiravan

.. Appellant/Petitioner

Versus

1.C.Jeyaraman

2.United India Insurance Company Limited,
No.28, Mailam Road,
Meenakshi Complex (II Floor),
Tindivanam.

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 18.12.2012 made in M.C.O.P. No.118/2009 on the file of the Motor Accidents Claims Tribunal (I Additional Subordinate Judge), Salem.

For Appellant : Mr.P.Jagadeesan

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

J U D G M E N T

The Civil Miscellaneous Appeal has been directed against the impugned award dated 18.12.2012 made in M.C.O.P. No.118/2009 on the file of the Motor Accidents Claims Tribunal (I Additional Subordinate Judge), Salem.

2.The case of the claimant is that on 01.12.2006 at about 7.30 a.m., when the claimant along with his wife and kid were travelling in TVS 50 Moped bearing Registration No.KA 05/V 5842 towards Hosur Railway Station, a Tempo bearing Registration No.TN 28/L 6628, came from Mathigiri Sub Jail Road in a rash and negligent manner and dashed the claimant's moped and ran over the claimant's right leg and due to the same, he fell unconscious. Immediately after the accident, the claimant's wife, with the help of Auto Drivers, taken him to Vijaya Hospital, Hosur for treatment. According to the claimant, the accident had occurred due to rash and negligent manner of the driver of the Tempo.

3.Learned counsel appearing for the appellant/claimant would submit that the Tribunal has grossly erred in granting only a sum of Rs.2,18,850/- towards total compensation for the severe injuries sustained by the appellant. He would further submit that the Tribunal ought to have fixed Rs.2,54,082/- instead of Rs.73,850/- for medical expenses, which is supported by medical bills/Ex.P4 and it has not granted any compensation for the loss of earning during the period the appellant could not work due to his severe injuries. Adding further, he would submit that when the appellant is unable to squat in the floor, not able to sit and walk fastly, the Tribunal has awarded only a sum of Rs.80,000/- for the disability sustained by him. He would submit that when the appellant/claimant had suffered multiple injuries and fractures on right leg and for which he has proved that he has undergone treatment as inpatient from 01.12.2006 to 13.12.2006 in Hosmat Hospital, Bangalore and he underwent operation for the fracture fibula and tibia, the Tribunal has fixed only 40% permanent disability and it has arrived Rs.80,000/- by fixing Rs.2,000/- per percentage of disability, which needs enhancement. With regard to the head 'pain and sufferings', learned counsel for the appellant/ claimant would submit that the Tribunal has awarded a meagre compensation of Rs.50,000/- under the above mentioned head and hence, he prays for enhancement.

4.Heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company.

5.The claimant, who was eking his livelihood as a Concrete Pump Operator, met with an accident on 01-12-2006 at about 7.30 while he was travelling along with his wife and child. As a result the injured fell down and also sustained fracture in his below right leg knee, which completely crushed and also sustained multiple grievous injuries all over his body. Immediately after the accident, he was taken to Vijaya Nursing Home, Hosur. After first aid treatment, he was then referred to Hosmat Hospital, Bangalore for better treatment. In the meanwhile, he has also filed F.I.R. against the offending driver of the Tempo Van on the file of Hosur Police Station, in which a case has been registered in Crime No.391/2006 against the driver of the Tempo Van for an offence under Sections 279 and 338 IPC. Thereafter, a claim was made before the Tribunal. The Insurance Company by way of filing counter affidavit had denied the negligence on the part of the Tempo Van and it was their case that the accident occurred only due to the rash and negligent driving of the rider of the two wheeler.

6.The Tribunal, after considering the pros and cons of the case, has given its finding that when the injured was nearing Hosur Railway Station, the driver of the first respondent came in a rash and negligent manner and dashed against the two

wheeler and caused the injuries. On this basis, after finding that there is a violation of policy condition, it has applied the rule of pay and recovery.

7.While dealing with the quantum of compensation, the Tribunal, taking support from the discharge summary marked as Ex.P3, showing that he was admitted as inpatient from 01.12.2006 to 13.12.2006 and for the said period, he also underwent the operation for the fracture Tibia and fibula, has considered the fact that the injured has sustained open type II fracture tibia and fibula right leg with loss of skin over upper part of culf and popliteal fossa. Accepting the evidence adduced by the Doctor, who was examined as P.W.2, certifying 40% disability, it has fixed 40% partial and permanent disability and awarded a sum of Rs.2,000/- per percentage on 40% disability, which comes to Rs.80,000/- and on this basis, has awarded a sum of Rs.50,000/- under the head 'pain and suffering.

8.Learned counsel appearing for the appellant submitted that the injured had sustained right leg knee and for which he was taking treatment in Hosmat Hospital, Bangalore as in-patient from 01.12.2006 to 13.12.2006 and he had also undergone operation in his right leg for fixation of steel rod and after fixation, when he was adviced to remove the steel rod, he was again re-admitted on 23.04.2007 and he was discharged on 26.04.2007, after removal of the steel rod. The Tribunal, without taking note of the subsequent discharge, namely, for removal of steel rod, he was re-admitted in the same hospital on 23.04.2007 and discharged only on 26.04.2007, has awarded the aforesaid amount towards disability and pain and sufferings.

9.This Court has already settled the issue on the question of fixing the disability at Rs.3,000/- per percentage of disability keeping in mind the price rise in the case of National Insurance Company Limited v. G.Ramesh reported in 2013 (2) TNMAC 583 (Madras). Accordingly, Rs.1,20,000/- is hereby fixed towards 40% disability at Rs.3,000/- per percentage. This Court is hereby fixed Rs.1,00,000/- towards pain and sufferings, considering the above said injuries.

10.As the injured has sustained the above said multiple grievous injuries, he would have suffered much pain and sufferings. As the injured was working as a Concrete Pump Operator and earning a sum of Rs.7,500/- per month in a consolidated contractors company, no doubt he would not have worked for a period of three months, in which he had undergone treatment. Therefore, this Court is inclined to fix Rs.22,500/- (7500 x 3) towards loss of income during the treatment period. Since no amount has been awarded towards loss of amenities, this Court is inclined to award Rs.50,000/- under the said head and the same is hereby awarded. The amount awarded by the Tribunal

under the other heads are confirmed. The modified compensation as per the above discussions are as follows:

Pain and sufferings	Rs.1,00,000/-
40% Disability	Rs.1,20,000/-
Loss of income during the treatment period	Rs. 22,500/-
Extra nourishment	Rs. 10,000/-
Transportation	Rs. 5,000/-
Medical bills	Rs. 73,850/-
Loss of amenities	Rs. 50,000/-

Total	Rs.3,81,350/-

11. Therefore, the claimant is entitled to the above said enhanced compensation with interest at the rate of 7.5% per annum.

12. The Insurance company/second respondent is hereby directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order, less the amount, if any, already deposited by them. On such deposit, it is open to the claimant to move an application to withdraw the same. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

13. As the Tribunal has given a clear finding that in view of violation of the policy condition by the driver of the offending vehicle, the Insurance Company is directed to pay the award amount first to the injured/claimant and thereafter, recover the same from the owner of the vehicle, this Court is inclined to confirm the said finding given by the Tribunal. Therefore, the Insurance Company is directed to pay the compensation and recover the same from the owner of the vehicle, who is the first respondent herein.

Sd/-
Asst. Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

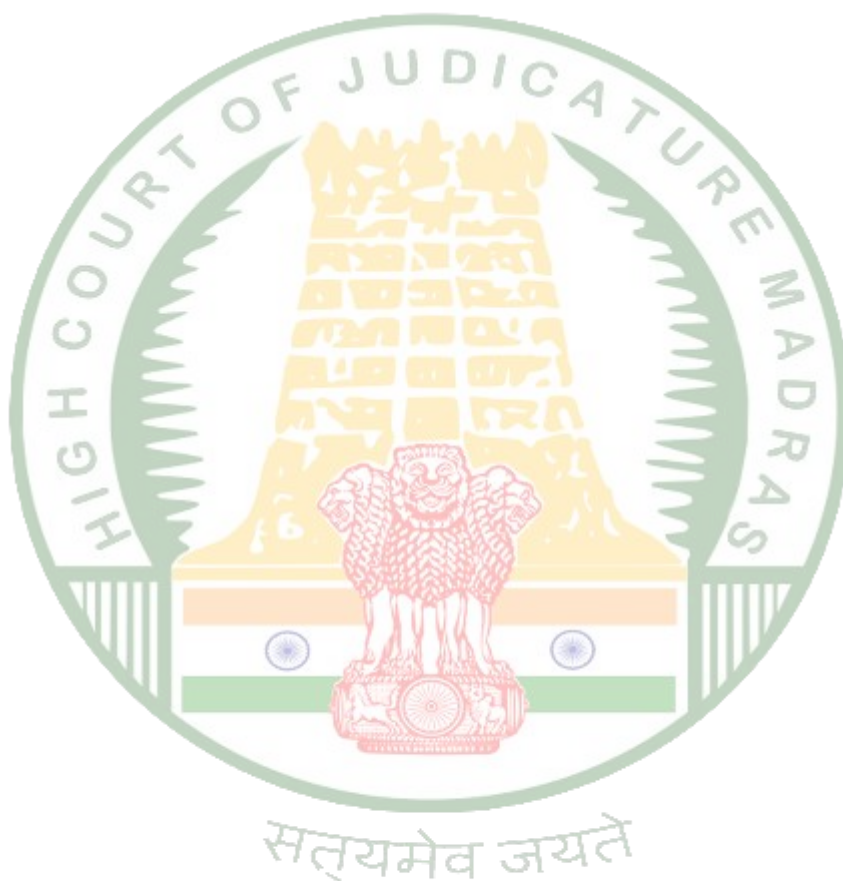
1. The Motor Accidents Claims Tribunal,
(I Additional Subordinate Judge), Salem.

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

+1 cc to M/s.T.Ravichandran,advocate,sr.70766.

mp(co)
krd 24/1

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