

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1703 of 2009

M.Ravi

..Appellant/Petitioner

Vs.

1.C.Ramasamy

2.National Insurance Co. Ltd.,
No.751, Anna Salai
Chennai - 600 002

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in the claim petition in M.C.O.P.No.2228 of 2005 dated 30.05.2008 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Judge, III Fast Track Court), Chennai.

For Appellant : Mr. A.Shanmugaraj
For Respondent No.2 : Mr.C.R.Krishnamoorthy
For Respondent No.1 : Exparte

JUDGMENT

Having been not satisfied with the award of the Tribunal to the extent of Rs.43,000/- as against the claim of Rs.2,00,000/-, the claimant has come forward with this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. It is revealed from the records that on 15.09.2004, at about 04.15 a.m, the driver who was on the steering wheel of the tanker lorry bearing Registration No.TAL 5335 had driven the same in a rash and negligent manner and dashed against a car bearing Registration No.TN01-R-8947 in which the claimant was travelling as a passenger. In the said accident, the appellant had sustained fracture and dislocation of right Patella (knee), head injury and multiple injuries all over his body. Claiming a sum of Rs.2,00,000/-, he had moved the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Chennai.

3. This claim petition was contested by the second respondent Insurance Company, while the first respondent being the owner of the offending vehicle, remained ex parte. On appreciation of evidences, both oral and documentary, the claims

Tribunal had totally awarded a sum of Rs.43,000/- as against the claim of Rs.2,00,000/- under the following heads:

Pecuniary Loss

Medical Expenses (as per Ex.P5)	:	Rs.2,926/-
Conveyance Expenses	:	Rs. 3,000/-
Extra Nourishment	:	Rs. 2,000/-

Non-Pecuniary Loss

Pain and Suffering	:	Rs. 5,000/-
Permanent disablement of earning power at 30%	:	Rs.30,000/-

Total		Rs.42,926/-
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Rounded Off to Rs.43,000/-.

4. It is significant to note here that the appellant was aged about 28 years at the time of occurrence and working as a Processing Officer and earned a sum of Rs.7,000/- per mensem. PW2-Dr.Saichandran, after examining the appellant clinically, had assessed his disability at 35%. To that effect, he had also issued Ex.P7-Disability Certificate. However, the Tribunal had reduced the percentage of disability to 30% from 35%.

5. Mr.A.Shanmugaraj, learned counsel appearing for the appellant has contended that the Claims Tribunal ought to have passed an award as per the second schedule to 163 A of the Motor Vehicles Act in stead of calculating the compensation under common liability. He has also contended that as the age of the appellant at the time of accident was 28 years, the Motor Accident Claims Tribunal ought to have selected the multiplier of 18 as per the second schedule. He would further submit that the Motor Accident Claims Tribunal ought to have fixed the compensation for the loss of earning capacity and permanent disability at Rs.2,38,000/- in stead of fixing the compensation at Rs.30,000/-.

6. This Court has considered the submissions made by Mr.A.Shanmugaraj, learned counsel for the petitioner as well as Mr.C.R.Krishnamoorthy, learned counsel for the second respondent Insurance Company.

7. Having regard to the related facts and circumstances, this Court finds that the amount awarded by the Tribunal under the heads of transport expenses, extra nourishment, pain and suffering and permanent disability may be enhanced. That apart, considering the nature of injuries sustained by the petitioner, this Court is of the view that a sum of Rs.25,000/- may also be granted towards loss of amenity. The enhanced award is detailed hereunder:

Pecuniary Loss

Medical Expenses (as per Ex.P5) : Rs.2,926/-
(amount awarded by the
Tribunal is maintained)

Transport Expenses : Rs. 8,000/-
(Rs.5000/- is granted in addition to
Rs.3,000/- awarded by the Tribunal)

Extra Nourishment : Rs. 5,000/-
(Rs.3000/- is granted in addition to
Rs.2,000/- awarded by the Tribunal)

Non-Pecuniary Loss
Pain and Suffering : Rs. 30,000/-
(Rs.25,000/- is granted in addition to
Rs.5,000/- granted by the Tribunal)

Permanent disablement of earning
power at 30% : Rs.60,000/-
(Rs.2,000/- is granted per percentage
of disability instead of
Rs.1000/- granted
by the Tribunal)

Loss of Amenity : Rs.25,000/-

Total Rs.1,30,926/-

Rounded off to Rs.1,31,000/-

In the result, the Civil Miscellaneous Appeal is allowed and the second respondent Insurance Company is directed to pay the enhanced amount of compensation of Rs.1,31,000/-, less the amount already deposited if any, alongwith the interest at 9% p.a from the date of petition till realization within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the entire amount of compensation without actually filing any formal application. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa

To

The Additional District and Sessions Judge,
III Fast Track Court, Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.46166

+1cc to Mr.C.R. Krishnamoorthy, Advocate, S.R.No.46293

NRJK(CO)

EU(11/11/2016)

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