

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2016

CORAM:
THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3145 of 2010

William Vedhakkan

... Appellant/Petitioner

Versus

1. M.Vijayakumar

2. The Divisional Manager,
M/s.United India Insurance Company Ltd.,
M.B.T.Road, Ranipet,
Vellore District. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 14.07.2010 made in M.C.O.P.No.124 of 2008 on the file of the Motor Accident Claim Tribunal, Sub Judge, Ranipet.

For Appellant : Mr.C.Prabhakaran

For Respondents : R1-Exparte before Tribunal
Mr.J.Michael Visuvasam - R2

J U D G M E N T

This civil miscellaneous appeal has been filed seeking enhancement of compensation against the award dated 14.07.2010 made in M.C.O.P.No.124 of 2008 passed by the Motor Accident Claim Tribunal, Sub Judge, Ranipet, awarding a sum of Rs.1,50,217/- as against the claim of Rs.6,00,000/- for the grievous injuries sustained by the appellant in the accident took place on 20.06.2008, when he was riding his two wheeler bearing Reg.No.TN 23 F 3103 in Chennai-Bangalore National Highways near AKM Weigh Bridge, a Auto Rickshaw bearing Registration No.TN 23 AD 3362 came in the opposite direction and dashed against the appellant.

2.The learned counsel for the appellant would submit that the learned Tribunal failed to consider the evidence of P.W.1, P.W.2 and P.W.3 and documents Exs.P1 to P14. The learned

Tribunal erred in awarding compensation of Rs.45,000/- towards partial permanent disability at the rate of 30% and Rs.30,000/- towards pain and suffering which are very low since the appellant has taken treatment in Vellore CMC hospital as inpatient for more than 3 months and as outpatient for one year. He would further submit that the learned Tribunal ought to have awarded higher compensation towards loss of earning since the appellant was relieved from service 17 months prior to his regular retirement. Further, the appellant has not been awarded with any attendant charges though he had taken treatment for a period of three months as inpatient and as outpatient for one year. The learned Tribunal ought to have adopted the multiplier method for awarding compensation towards loss of income. Therefore, the award of the learned Tribunal is liable to be modified by this court and sufficient and more compensation should be awarded.

3.Learned counsel for the second respondent would submit that the appellant's two wheeler was not insured with any insurance company. The appellant was 57 years of age at the time of accident and he had not filed any documents to prove his age and income. The appellant only drove his two wheeler without any due care of the oncoming vehicles and he was alleged to have been hit by the auto. He would further submit that the learned Tribunal awarded higher compensation without any proof of documents. Hence, the appeal is liable to be dismissed.

4.On 20.06.2008 at 7.30 a.m., when the appellant was riding his two wheeler bearing Reg.No.TN 23 F 3103 in Chennai-Bangalore National Highways near AKM Weigh Bridge, a Auto Rickshaw bearing Registration No.TN 23 AD 3362 came in the opposite direction driven by its driver in a rash and negligent manner dashed against the appellant in which he sustained bone fracture on his right thigh and all over the body. He was immediately admitted to CMC hospital. FIR was marked as Ex.P1. He had undergone surgery and rod was implanted and thereafter he was discharged on 02.07.2008. P.W.3 Medical Officer assessed 30% permanent disability and gave Ex.P4 Disability Certificate. The appellant was 56 years old at the time of accident and working in a private concern as Office Superintendent and earning a sum of Rs.5,690/- p.m. Ex.P.10 Salary certificate and Ex.P11 Service Certificate were marked. Considering the fact that the learned Tribunal has awarded less amount of Rs.45,000/- towards injury, this court is inclined to award Rs.2000/- for each percentage of disability which comes to Rs.60,000/- (i.e.,Rs.2,000X 30%). The records relied on by the learned Tribunal clearly show that the appellant sustained fracture and rod was implanted through a surgery. Again he had to undergo another surgery for removing

the rod. Further he sustained permanent disability and he could not fold his right leg more than 90 degree. Although the learned Tribunal has awarded Rs.30,000/- towards pain and suffering as it is unreasonably meager amount the same is modified to Rs.50,000/-. Besides, the learned Tribunal had not awarded any amount towards attendant charges. Since the appellant had undergone surgery and took treatment as inpatient for three months and thereafter as outpatient for one year, this court is inclined to award Rs.10,000/- towards attendant charges and Rs.10,000 towards transport expenses to hospital. In addition thereto, this court could see that the learned Tribunal has failed to consider the period of treatment taken to fix the loss of income. Admittedly, in the present case, after the claimant had suffered the injuries in the accident occurred on 20.06.2008, he was admitted in the CMC hospital, Vellore and underwent surgery wherein a rod was also implanted and discharged only on 02.07.2008. He was working in a private concern as Office Superintendent and earning a sum of Rs.5690/- per month as seen from the Salary Certificate Ex.P10. Thus, in view of the injuries sustained by him, followed by surgery, he could not have attended the office for a period of 10 months, therefore, this court is inclined to enhance the compensation towards loss of income. Accordingly, a sum of Rs.50,000/- is hereby awarded towards loss of income, instead of Rs.30,000/- awarded by the Tribunal. Further, the learned Tribunal awarded Rs.20,217 towards medical expenses, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards loss of expectation of life, which in my view, are just and reasonable compensation, therefore, the same remain unaltered. Accordingly, the award of the Tribunal is enhanced to Rs.2,20,217/- under the following heads:

i) Injury	: 60,000
ii)Transport charges	: 10,000
iii)Medical Expenses	: 20,217
iv)Pain and Suffering	: 50,000
v)Extra Nourishment	: 10,000
vi)Loss of Earning	: 50,000
vii)Loss of Expectation	: 10,000
viii)Attendant	: 10,000
Total	2,20,217/-

4. Therefore, the appellant is entitled to enhanced compensation of Rs.2,20,217/- with 7.5%p.a. from the date of deposit till the date of realisation. The second respondent Insurance company is directed to deposit the enhanced compensation less the amount already deposited if any, within a

period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same by moving appropriate application before the Tribunal.

In the result, the civil miscellaneous appeal is allowed.
No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sub Judge,
Motor Accident Claims Tribunal,
Ranipet.
- 2.The Divisional Manager,
United India Insurance Company Ltd.,
M.B.T.Road, Ranipet,
Vellore District.

Copy To

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

+1cc to Mr.C.Prabhakaran, Advocate, S.R.No.2388

सत्यमेव जयते

C.M.A No.3145 of 2010

JSV(CO)
CA(08/03/2016)

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