

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No. 378 of 2010

Kalidoss

... Petitioner/Appellant

Vs

1. Samuvel

2. The Oriental Insurance Company Limited
rep., by its Branch Manager
Salai Road
Dindugal Town
Dindugal District.

3. Armugam

4. The New India Assurance Company Limited
rep., by its Branch Manager,
Neela South Street,
Nagapattinam Town & District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 20.04.2006 passed in M.C.O.P.No. 122 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Nagapattinam.

For Appellant : Mr.M.Thamizhavel
For R-1 : Service awaited
For R-2 : Mr.N.Sampath
For RR 3 & 4 : Served. No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree, dated 20.04.2006 made in M.C.O.P.No. 122 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Nagapattinam.

2. The appellant had moved the Motor Accident Claims Tribunal, Sub Court, Nagapattinam, claiming a sum of

Rs.10,00,000/- for the injuries sustained by him in a road traffic accident, said to have been taken place on 1.11.2003.

3. The respondents 1 and 2 had contested the claim. However, on perusing the evidences both oral and documentary on either side, the Claims Tribunal had proceeded to pass an award of Rs.1,59,000/- directing the respondents 1 and 2 to pay this amount with interest at the rate of 7.5%. Having been not satisfied with the award of the Tribunal, the appellant stands before this Court, with this appeal for enhancement.

4. The learned counsel for the appellant would mainly contend that the Tribunal, without considering the evidence adduced on the side of the appellant, fixed the income of the appellant. The trial Court failed to see the nature of previous injuries sustained by the appellant in the accident. Further, the trial Court failed to consider the evidence of PWs-2 to 6. PW-4 has clearly given evidence that the respondent has sustained greivous injury and suffered 94% disability. Hence, the award passed by the Tribunal has to be set aside and the appeal has to be allowed.

5. The learned counsel appearing for the second respondent mainly contend that the trial Court, after appreciating the evidence on the side of the applicant, correctly fixed the disability at 50% and awarded compensation. He would further contend that it is just, proper and reasonable and there is no necessity to modify the compensation awarded by the trial Court, since there is no illegality or infirmity in the award passed by the trial Court. Hence, he prayed that the award passed by the trial Court has to be dismissed.

6. This Court heard the submissions made by Mr.M.Thamizhavel, the learned counsel appearing for the appellant and Mr.N.Sampath, the learned counsel for the second respondent and perused the entire records.

7. In this case, even according to the appellant, the applicant is working as Distributor in the ration shop and average working in the ration shop is 10 days and earning Rs.900/- per month. Further, the appellant deposed that he is doing the cooking work for the marriages etc., and getting average income of Rs.250/- per day. To prove this fact, the appellant has produced the identity card for his business, as a cook for the marriages.

8. In view of the above, it is seen that the trial Court has only fixed the income of the appellant at Rs.1,500/- per month, which is very low by not considering the fixed income of

Rs.900/- per month and income from other sources. This Court is of the view fixing the income of Rs.2,000/-. p.m., is proper one.

9. The trial Court considered the evidence of the appellant and Doctor's certificate produced on the side of the petitioner and fixed the disability at 50%.

10. The learned counsel for the appellant vehemently contended that the disability has to be fixed as 94% and the appellant is still doing the work, but with some disability. The argument of the learned counsel appearing for the appellant that the disability may be fixed at 94% is not acceptable. The trial Court after considering the disability, correctly fixed the disability of the claimant as 54%. This Court is of the considered view that the disability of 54% fixed by the trial Court is reasonable and acceptable one.

11. In this case, the trial Court in its Judgment observed that some of the medical bills have no name of the patient etc. Hence, the trial Court totally awarded Rs.15,000/- for medical expenses and injury and for the treatment period and pain and suffering and for the expenses to the attendant charges and totally awarded the said sum of Rs.15,000/-.

12. The learned counsel for the appellant also contended that the trial Court ought to have fixed the compensation for each and every heads separately. This Court is of the considered view that fixing of total consolidated compensation of Rs.15,000/- under the above head is not acceptable. The compensation has to be fixed for each separate head.

13. This Court, considering the loss of earning for the treatment for two months, is of the view that the appellant is entitled Rs.2,000 x 2 = 4000 as compensation. Further, for the medical expenses, this Court is of the considered view that for medical expenses the claimant is entitled for Rs.2,000/- and for nutrition food, he is entitled to Rs.2,000/-. It is admitted that the appellant has got injuries on the head and also in the nosel bone and also last four teeth and fracture in the right shoulder and right hand and he is also done surgery.

14. Considering all the injuries stated above, this Court is of the considered view that the appellant is entitled for pain and suffering for a sum Rs.25,000/- and for the loss of earning power, he is entitled to a sum of Rs25,000/-. Considering the age of the appellant, the proper multiplier would be 16% and fixing the calculation the income of loss of 50% disability and the compensation will be 2,000 x 12 x 16 x

50/100 = 1,92,000/-. Hence, the appellant is entitled for compensation of Rs.2,50,000/-. Hence, the appellant is entitled to enhance compensation of Rs.2,50,000/- from Rs.1,59,000/-. Hence, this Court is of the considered view that the petitioner is entitled to enhance compensation of Rs.2,50,000/- from Rs.1,59,000/-.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation granted to the appellant is enhanced from Rs.1,59,000/- to Rs.2,50,000/- together with interest at the rate of 9% from the date of petition till the date of deposit. In other aspect, the order of the trial Court is confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Nagapattinam.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Sampath, Advocate, S.R.No.70838

+1cc to Mr.Thamizhavel, Advocate, S.R.No.70440

SKV(CO)

RS(10/03/2017)

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