



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1388 of 2015

Muthumariappan

... Appellant/Claimant

Vs.

1.Mukesh

2.Mohammed Yoosuf

3.The Divisional Manager,
United India Insurance Company Ltd.,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli - 2.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2014 in M.C.O.P.No.45 of 2012 on the file of the learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.N.Sivakumar for R3

No appearance for R1 and R2

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant challenging the award dated 24.03.2014 in M.C.O.P.No.45 of 2012 passed by the learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

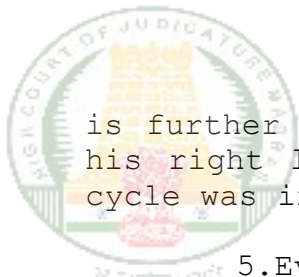
2.The appellant herein is the claimant before the Tribunal. The claimant filed a claim petition before the Tribunal for compensation for the injuries sustained in a road accident claiming a sum of Rs.7,00,000/- as compensation.

3.The facts of the case are as follows:

It is the case of the claimant before the Tribunal that on 20.08.2010 at about 12.40 p.m., when the claimant tried to cross Tirunelveli - Trivandrum junction road, at that time, a motor cycle bearing registration No.TN-72 B-7859 came in a rash and negligent manner and dashed against the claimant. Due to the impact, the claimant sustained fracture on his leg. Immediately, he was taken to Tirunelveli Medical College Hospital for taking first aid and thereafter, he was admitted in Karthik Nursing Home for further treatment.

<https://hcservices.ecourts.gov.in/hcservices/>

4.According to the claimant, due to the rash and negligent driving of the rider of the motor cycle, the accident had occurred. It



is further stated that due to the accident, surgeries were conducted on his right leg and he lost his two teeth on the upper side. The motor cycle was insured with the 3rd respondent.

5. Eventhough notice were served on the respondents 1 and 2, they did not appear and they were set ex parte before the Tribunal.

6. The case of the claimant was resisted by the 3rd respondent / Insurance Company by filing a counter affidavit. The 3rd respondent / Insurance Company stated that the rider of the vehicle had driven the vehicle carefully by following the traffic rules. However, the claimant himself suddenly crossed the road, without following the traffic rules. The accident had occurred, due to the fault on the part of the claimant. It is further stated that there is no proof for the residence of the claimant, occupation and also disability. Hence, it was contended that the 3rd respondent / Insurance Company was not liable to pay compensation.

7. Before the Tribunal on the side of the claimant P.W.1 and P.W.2 were examined as witnesses and 13 documents were marked as Exs.P1 to P13. On the side of the respondents no documentary and oral evidence were adduced.

8. After considering the pleadings, and oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving by rider of the motor cycle and directed the appellant / Insurance Company to pay the compensation with interest. Against which, the present Civil Miscellaneous appeal is filed by the appellant / claimant for enhancement of compensation.

9. The learned counsel for the appellant / claimant submitted that the Tribunal ought to have adopted the multiplier method for calculating the 15% disability. He further submitted that at the time of accident, the claimant, who was a retired employee from Government department, was working in R.M.K.V. textile shop and was earning a sum of Rs.8000/- per month. Due to the accident the claimant was not able to do the said job.

10. Per contra, the learned counsel for the 3rd respondent / Insurance Company contended that Tribunal failed to see that the appellant was a retired Government employee and failed to prove his employment after retirement and income received by him. The Tribunal failed to consider the fact that appellant did not suffer any loss of income. The amount awarded is excessive. He further contended that the finding of the Tribunal has to be set aside.

11. Heard the learned counsel for the appellant / claimant and the learned counsel for the 3rd respondent / Insurance Company.

12. Due to the accident two surgeries were conducted on the right leg of the claimant and two tooth of upper jaw were damaged and also as per the evidence of the Doctor P.W.2, the Tribunal has fixed the disability at 15% and calculated the compensation for 15% disability by applying Rs.2,000/- per percentage and awarded a sum of Rs.30,000/-. The said award is just and proper and hence, the same is confirmed. The Tribunal has not awarded any amount towards pain and suffering. Considering the nature of the injury and also considering the fact that

the claimant took treatment for 8 days as inpatient, I am of the view that towards pain and sufferings a sum of Rs.25,000/- is awarded, which is just and reasonable. The award amount with regard to the other heads namely, Nutrition, Transportation, Loss of income, Ex.P.12 series medical bills, Ex.P.10 series medical bills, Ex.P.9 series medical bills and Ex.P.16 series medical bills are confirmed.

13. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For 15% disability	30,000.00	30,000.00	Confirmed
2.	Ex.P.16 series medical bills	85,828.00	85,828.00	Confirmed
3.	Ex.P.9 series medical bills	77,528.00	77,528.00	Confirmed
4.	Ex.P.10 series medical bills	9,506.00	9,506.00	Confirmed
5.	Ex.P.12 series medical bills	5,247.00	5,247.00	Confirmed
6.	Loss of income	4,000.00	4,000.00	Confirmed
7.	Transportation	3,000.00	3,000.00	Confirmed
8.	Nutrition	5,000.00	5,000.00	Confirmed
9.	Pain and sufferings	-	25,000.00	Granted
Total compensation		2,20,109.00	2,45,109.00	25,000

Hence, the claimant is entitled for a sum of Rs.2,45,109/- with interest at 7.5% per annum as compensation. The 3rd respondent / Insurance Company is directed to deposit the entire award amount, now determined by this Court, with accrued interest and costs, if not already deposited.

14. In the result, the award dated 24.03.2014 in M.C.O.P.No.45 of 2012 passed by the learned Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil, Kanyakumari District is hereby modified and the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1. The Motor Accident Claims Tribunal /
Chief Judicial Magistrate,
Nagercoil, Kanyakumari District.

2. The Divisional Manager,
United India Insurance Company Ltd.,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli - 2.

+ 1 CC TO MR.N.SUDHAGAR NAGARAJ, ADVOCATE IN SR NO. 13302

+ 1 CC TO MR.N.SIVAKUMAR, ADVOCATE IN SR NO. 13357

NBJ

TE/KBM/SAR-II : 06/06/2016 : 4P/5C

C.M.A. (MD) No.1388 of 2015
08.03.2016