

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.100 of 2017

Arumugam ... Appellant/Petitioner

/vs/

1 . K.Paneerselvam

2. The Divisional Manager,
National Insurance Company Limited,
No.62-A, J.N.Street,
Puducherry. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 20.02.2014 in M.A.C.T.O.P.No.734/2009 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge at Puducherry.

For Appellant ... Mr.R.Sreedhar

For 1st Respondent ... Ex-parte

For 2nd Respondent ... Mr.S.Vadivel

J U D G M E N T

The appellant is the claimant in MACTOP.No.734/2009 on the file of the learned Principal Subordinate Judge, Motor Accidents Claims Tribunal, Puducherry. The claim was made for a sum of Rs.7,00,000/- The Tribunal has awarded a sum of Rs.93,000/- as compensation under various heads with interest at 7.5% p.a. from the date of petition till the date of payment which are as follows:

Sl.No.	Name of the Head	Amount Rs.
1	Permanent Disability	58,000/-
2	Pain and Sufferings	10,000/-
3	Medical Expenses	5,000/-
4	Loss of Income during the treatment period	10,000/-
5	Extra Nourishment	5,000/-
6	Transport Charges	5,000/-
	Total	93,000/-

The appeal is made with respect to the enhancement of the compensation for the fracture injuries sustained by him in the accident that occurred on 27.06.2009.

2. The challenge is only with respect to the quantum of compensation. The question of negligence is not disputed. The accident occurred on 27.06.2009 at about 06.15 p.m., while the petitioner and his friend Raja were proceeding to Puducherry from Kalapet on a Three Wheeler Bajaj Auto Rickshaw bearing Registration No.PY01-R-5735 belonging to the 1st respondent, near Bharathidasan Women College, Muthialpet, Puducherry and at that time, the driver of the said auto drove the vehicle with a great speed and in a rash and negligent manner, without noticing a buffalo crossing the road, dashed against the said buffalo and due to the sudden and forcible impact, the petitioner sustained grievous fracture injuries on his left leg thigh and he was treated as inpatient at Government Hospital Puducherry. Hence, the petitioner has made a claim for Rs.7,00,000/-.

3. The 2nd respondent Insurance Company had filed its Counter Affidavit refuting the claim made by the petitioner. According to the 2nd respondent, the claim of the petitioner is not at all maintainable on the ground of contributory negligence. It is also denied that the accident was not happened due to the negligence of the 1st respondent. Therefore, the 2nd respondent is not liable to pay any compensation.

4. Based on the evidence, the Motor Accidents Claims Tribunal has held that the accident happened due to the rash and negligent driving of the vehicle bearing Registration No.1PY01-R-5735 belongs to the 1st respondent, driven by its driver which was insured with the 2nd respondent. Hence, the Tribunal has directed the 2nd respondent Insurance Company to pay a compensation of Rs.93,000/- to the petitioner. Seeking

enhancement of the same, the claimant/appellant is before this Court with this appeal.

5. Learned Counsel for the petitioner submits that the Doctor who treated the claimant/appellant has assessed the disability at 49%, but the Tribunal has fixed the permanent disability only at 29%. Further, no amount has been awarded under the head of Loss of Amenities.

6. Per contra, the learned Counsel appearing for the 2nd respondent submits that the compensation awarded by the Tribunal is just and reasonable which does not warrant any interference at the hands of this Court.

7. I have considered the rival submissions made on either side and I have also perused the records carefully.

8. The injured had sustained disability and that is certified to be at 49% by the Doctor as per Ex.P.7 and the said Doctor has been examined as P.W.2. However, the Tribunal had taken the disability only at 29% and awarded Rs.58,000/-. For the accident of the year 2009, this Court has already awarded Rs.3,000/- for each per centage. Hence, following the same, this Court is inclined to award Rs.3,000/- for each per centage of disability i.e. $40\% \times 3,000 = 1,20,000/-$. Accordingly, taking the disability at 40% as the injured had undergone surgery etc., the pain and sufferings awarded at Rs.10,000/- is enhanced to Rs.25,000/-. For the medical expenditure, the Tribunal had awarded Rs.5,000/- and the same is confirmed. Though the injured had undergone a surgery, it was done in the Government Hospital at free of cost. Hence, there were no bills produced by the claimant for the medical expenses.

9. Due to the accident, for the loss of income during the treatment period, the tribunal had awarded a sum of Rs.10,000/-. This Court is not inclined to interfere with the same as rightly pointed out by the learned Counsel for the 2nd respondent that there is no evidence produced to show the income of the claimant. With respect to the amount awarded under the head of 'Extra Nourishment', this Court is enhancing the same from Rs.5,000/- to Rs.10,000/- and confirming the award amount of Rs.5,000/- towards transport expenses.

10. Considering the age of the injured and the sufferings, he has undergone due to the accident, he should be awarded under the head of Loss of Amenities. That has not been considered by the tribunal. Therefore, this Court is adding another Rs.10,000/- under the head of Loss of Amenities.

11. In fine, the appeal is allowed in part enhancing the award of compensation as follows:

Sl.No.	Name of the Head	Amount Rs.
1	Permanent Disability	1,20,000/-
2	Pain and Sufferings	25,000/-
3	Medical Expenses	5,000/-
4	Loss of Income during the treatment period	10,000/-
5	Extra Nourishment	10,000/-
6	Transport Charges	5,000/-
7	Loss of Amenities	10,000/-
	Total	1,85,000/-

12. It is stated that the compensation already awarded has been deposited. The 2nd respondent Insurance company is directed to deposit the remaining enhanced award amount within a period of four weeks from the date of receipt of a copy of this Order along with interest at 7.5% p.a. from the date of petition till the date of deposit. In the event of such deposit being made, the appellant is entitled to withdraw the said amount. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
The Motor Accident Claims Tribunal,
Principal Subordinate Judge at
Puducherry.

Copy to:
The Section Officer,
V.R.Section, High Court, Chennai.

+1 cc to Mr.R.Sreedhar, advocate, sr.15568
+1 cc to Mr.S.Vadivel, advocate, sr.15549.

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