

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1308 of 2017

N. Vijayakumar

..Appellant

Vs.

1. A. Shanmugam
 2. United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 21.
Now office changed at
United India Insurance Company Ltd.,
Third Party Claims Office,
NO.134, Greams Road, Chennai - 6.
 3. The Managing Director,
Tamil Nadu State Transport Corporation,
No.3/137, Salamedu,
Valudha Reddy - Post,
Villupuram
- ..Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 21.10.2011 passed in M.C.O.P. No. 607 of 2005 by the Motor Accidents Claims Tribunal (VI Small Causes Court), Chennai.

For Appellant :: Mr.J. Ramkumar

For Respondents:: R1 exparte

Mr.J. Chandran for R2

Mr.K.J. Sivakumar for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant as against the award of Rs. 1,29,706/- passed by the Motor Accidents Claims Tribunal (VI Small Causes Court), Chennai, in M.C.O.P. No. 607 of 2005 for the injuries sustained by him in the accident, which occurred on 01.06.2004, when the bus belonging to the 3rd respondent Corporation, in which he was travelling, was hit by a lorry bearing Registratin No. TN-43-A-1482 insured with the 2nd respondent/Insurance Company.

2. Heard Mr.J. Ramkumar, learned counsel for the appellant, Mr.J. Chandran, learned counsel for the 2nd respondent and Mr.K.J. Sivakumar learned counsel for the 3rd

respondent.

3. As far as negligence aspect is concerned, the Tribunal, based on P.W.1's evidence, Ex-P1, FIR and Ex-P2, Accident Register Copy found that both the lorry, insured with the 2nd respondent Insurance Company as well as the bus, belonging to the 3rd respondent Corporation were responsible for the accident and fixed the liability on the 3rd respondent Transport Corporation as well as on the 2nd respondent Insurance Company at 50:50. There is no contra evidence to rebut the same and therefore, the contributory negligence fixed by the Tribunal at 50:50 on the 2nd and 3rd respondents is confirmed.

4. On account of the accident, the claimant sustained fracture of both bone of left leg and fracture of 2nd and 3rd phalynx in left hand and was treated as an inpatient in total for 29 days on two occasions and had undergone surgery each time whereby IM nailing for left tibia and cancellous screw fixation for left middle malleolar was done. Taking into account, the above facts and also based on the evidence of P.W.2 Doctor, the percentage of disability was fixed at 40%. The said determination, based on evidence and records, cannot be found fault with and same is confirmed.

5. However, the Tribunal, awarded only Rs.80,000/- for 40% disability @ Rs.2000/- per percentage of disability and the same requires to be enhanced. Accordingly, awarding Rs.3000/- per percentage of disability, the amount towards "Disability" is enhanced to Rs.1,20,000/-. Since no amount was awarded under "Loss of Amenities", a sum of Rs.10,000/- is awarded. As far as the other amounts, namely, "Loss of income for one month @ Rs.9706/- per month", "Transportation", "Extra Nourishment" and "Pain and Suffering" are concerned, they are reasonable and hence, confirmed. Thus, the award of Rs. 1,29,706/- of the Tribunal is enhanced to Rs. 1,79,706/- rounded off to Rs.1,80,000/-. The rate of interest awarded by the Tribunal @ 7.5% per annum remains undisturbed.

6. The 2nd respondent and the 3rd respondent are directed to deposit their respective share of the award amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the claimant, through RTGS, after getting his Bank Account details, within a period of one week thereafter.

However, it is made clear that the claimant would not be entitled to any interest on the award amount for the period of delay of 1345 days in preferring the appeal.

7. Since the award amount has been enhanced, the claimant shall pay additional court-fee, if any.

8. In the result, the Civil Miscellaneous Appeal is partly allowed, enhancing the compensation awarded by the Tribunal from Rs.1,29,706/- to Rs.1,79,706/- along with interest @ 7.5% per annum. No costs.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

The Motor Accidents Claims
Tribunal (VI Judge, Court of Small
Causes), Chennai.

+1 CC to Mr. Sivakumar, sr 23965
+1 CC to Mr. Ramkumar, sr 23889
+1 CC to Mr. J. Chandran, sr 23860

C.M.A. No. 1308 of 2017

MK (CO)
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