

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.231 of 2017

G.Subramani Reddy

... Appellant/Petitioner

Vs.

1. M.A. Malick

2. The New India Assurance Co. Ltd.,
No.45, Moore Street,
V Floor, T.P.Cell,
Chennai 1.

3. R.Soniya

... Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2012 made in M.C.O.P.No.67 of 2010 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruttani.

For Appellant : M/s.Anand and Suryas
For 2nd Respondent : Mr.J.Michael Visuvasam

J U D G M E N T

Aggrieved by the quantum of compensation awarded by the Tribunal, the injured claimant has come up with the present Appeal seeking enhancement of compensation.

2. According to the claimant, on 28.01.2008, about 3.00 p.m., when he was standing on the left side of Tiruttani to Tiruvallur Road, near Narayanamangalam Kutt Road, a Hyundai Santro Car bearing Registration No.TN 02 L 2704 coming on the same road, driven by its driver in a rash and negligent manner, hit him, as a result of which, he sustained grievous and multiple injuries all over the body. The injured claimant filed a claim petition before the Tribunal seeking a sum of Rs.5,00,000/- as compensation for the injuries.

3. After analyzing the available oral and documentary evidence, the Tribunal awarded a sum of Rs.2,70,248/- as compensation under the following heads:

Heads	Amount
Injuries	Rs.1,30,000.00
Loss of earning upto the date of claim petition	Rs. 12,000.00
Transportation	Rs. 5,000.00
Extra Nourishment	Rs. 5,000.00
Pain and suffering	Rs. 25,000.00
Medical Bills	Rs. 93,248.00
Total	Rs.2,70,248.00

4. Learned counsel appearing for the appellant/claimant contended that the Tribunal erred in awarding a meagre compensation towards injuries, without considering the disability sustained by the claimant. It is his further contention that the Tribunal has not awarded any amount towards loss of amenities.

5. While so, according to the learned counsel appearing for the 2nd respondent, the compensation awarded by the Tribunal is certainly on the higher side. He strongly objected to the fixation of 65% permanent disability of the claimant by the Tribunal, stating that it is not proportionate to the injuries sustained by him.

6. On a perusal of the records, it is seen that the claimant has sustained bone fracture on his right leg, degloving injury on his right thigh and multiple injuries all over the body. After the accident, he was immediately admitted to Tiruvallur Government Hospital and he took treatment at Puttur. Subsequently, he underwent treatment at Sundaram Medical Foundation, Chennai from 05.04.2008 to 28.04.2008 as inpatient. Medical reports of the claimant further reveals that the shape of his leg has changed and that he cannot squat on the floor and walk properly and lift any weight. P.W.2, Doctor, who examined the claimant, assessed his permanent disability at 70% vide Ex.P7 - Disability Certificate. However, the Tribunal fixed the permanent disability of the claimant at 65%, as the percentage of disability may vary upto 5%. Taking into account the injuries sustained by the claimant, this Court finds no reason to interfere with the percentage of disability fixed by the Tribunal.

6. Coming to the compensation awarded by the Tribunal towards 'Disability', this Court is of the view that it is certainly on the lower side. Hence, this Court fixes Rs.2,500/-

for each percentage of disability and awards a sum of Rs.1,62,500/- (Rs.2,500/- x 65%) as compensation towards 'Disability'.

7. As far as fixation of monthly income of the claimant is concerned, though according to the claimant, he is an Agriculturist and a Tractor Broker, earning a sum of Rs.8,000/- per month, since there was no sufficient proof in support of his avocation, the Tribunal fixed a sum of Rs.4,000/- as his monthly income. A perusal of the records would reveal that the claimant was aged 62 years at the time of accident. For his age, the claimant would not have been in a position to proceed with his avocation atleast for a period of 6 months, due to the injuries. Hence, this Court finds it reasonable to enhance the compensation awarded under the head, 'Loss of income' to Rs.24,000/-.

8. Also, the compensation awarded under the heads, 'Transportation' and 'Extra nourishment' are enhanced to Rs.25,000/- and Rs.25,000/-, respectively. Further, taking note of the injuries suffered by the claimant and also his age, this Court enhances the compensation awarded under the head, 'Pain and Suffering' to Rs.60,000/-. As far as compensation under the head 'Medical Bills' is concerned, since the same is supported by requisite Bills, it is confirmed.

9. In fine, the compensation awarded by the Tribunal under various heads is enhanced and the break-up details of the revised award, are as under:

Heads	Compensation awarded by the Tribunal	Revised Compensation
Injuries	Rs.1,30,000.00	Rs.1,62,500.00
Loss of earning upto the date of claim petition	Rs. 12,000.00	Rs. 24,000.00
Transportation	Rs. 5,000.00	Rs. 25,000.00
Extra Nourishment	Rs. 5,000.00	Rs. 25,000.00
Pain and suffering	Rs. 25,000.00	Rs. 60,000.00
Medical Bills	Rs. 93,248.00	Rs. 93,248.00
Total	Rs.2,70,248.00	Rs.3,89,748.00

10. In view of the above, the compensation awarded by the Tribunal is enhanced and the claimant is entitled to a sum of Rs.3,89,748/- (Rupees Three Lakhs Eighty Nine Thousand Seven Hundred and Forty Eight only) as compensation along with interest at 7.5% per annum from the date of filing the claim petition till the date of realization, except the default period, if any.

11. It is made clear that if no amount is deposited so far, the 2nd respondent/Insurance Company is directed to deposit the entire award amount together with accrued interest to the credit of M.C.O.P.No.67 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruttani, within a period of six weeks from the date of receipt of a copy of this order.

12. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016, scrupulously.

This Civil Miscellaneous Appeal is allowed with the above direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

aeb
To :
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruttani.

+1cc to Mr.Anand and Suryas, Advocate, S.R.No.8661
+1cc to Mr.Michael Isuvasam, Advocate, S.R.No.8651

msm(CO)
md(17/03/2017)

C.M.A.No.231 of 2017