

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2185 of 2014

N.Raghupathy ... Appellant
Vs.

1. S.Marimuthu

2. R.Prabhakaran

3. National Insurance Co. Ltd.,
Division-II, Kavery Complex,
Trichy Road, Coimbatore.
Chennai-600 006.

(Respondents 1 and 2 have been given up in the appeal
as they have remained exparte at the Trial Court)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the judgment and decree dated
22.08.2007 and made in M.C.O.P.No.1387 of 2006 on the file of
the Motor Accident Claims Tribunal cum Additional Sub-Judge-III,
Coimbatore for enhancement of compensation.

For Appellant : Mr.N.Ponraj
For 1st Respondent : Exparte
For 2nd Respondent : Exparte
For 3rd Respondent : Mr.D.Bhaskaran

JUDGMENT

The claimant in MCOP.No.1387 of 2006 on the file of MACT
(Additional Sub Court III, Coimbatore) has approached this Court
expressing his dissatisfaction for the quantum of compensation
awarded to him. Raghupathi, the appellant herein, was riding
a two wheeler bearing No.TN38D-AT 8012 was thrown off along with
his pillion rider when on 10.02.2006 at about 5.30 a.m. the
bike in which they were travelling was knocked down by a lorry
bearing No.TN27 F 4599 belonging to the second respondent,
driven by the first respondent and insured with the third
respondent. In the said accident both the rider and the pillion
rider of the bike suffered extensive injuries and Raghupathi,
the rider has preferred claim for compensation in MCOP.No.1387

of 2006.

2. Raghupathi has suffered fracture to right wrist, fingers and leg, amputation of right ring finger, extensive injuries to whole of right leg, head injuries, disfiguration and had to be treated with bone grafting. He was admitted in M/s.K.G. Hospital, Coimbatore where he took treatment from 10.02.2006 to 22.02.2006 as in-patient and thereafter was shifted to M/s. Joseph Hospital and again from 31.03.2006 to 08.04.2006 as in-patient, that his fractures were both surgically corrected alongside bone grafting, that since his right knee joint was fractured despite the surgeries made he cannot fold his leg nor can do any of his other activities. The claimant was 36 years at that relevant time and he was running a photo studio and he was not in a position to continue the same. For the injuries suffered, the claimant preferred a claim for Rs.15,00,000/-, whereas the Tribunal has passed an award for Rs.3,54,212/-.

3. For quantifying the compensation payable for the partial permanent disability of the claimant, the Tribunal has relied on the testimony of P.W.3, the doctor, who had evaluated Reghupathy's disability backed by his certificate in Ext.P.53 at 90%. The Tribunal has accepted the same and has awarded the compensation for at Rs.90,000/- apparently calculating it at the rate of Rs.1000/- per disability. The compensation it awarded on various heads may now be tabulated as below:

Heads	Amount Awarded (Rs.)
Towards Permanent Disability	90,000/-
Towards Medical Expenses	1,79,512/-
Transportation charges	5,700/-
Pain and suffering	30,000/-
Mental Agony	5,000/-
Extra nourishment	3,000/-
Attendant charges	1,000/-
Towards future medical expenses	10,000/-
Loss of income	20,000/-
Towards dis figuration of face	10,000/-
Total :	3,54,212/-

4. Dissatisfied with the award amount and seeking enhancement of compensation, the claimant has preferred this appeal.

5. The learned counsel for the appellant argued that the Tribunal has not appreciated the gravity of the accident, its adverse impact it had on the livelihood of the appellant. Admittedly it is not in dispute that the claimant was running a photo studio and given the fact that his right hand along with his right leg is severely damaged, it would definitely would create difficulty for him to pursue his avocation with the same degree of felicity as he could have prior to the accident. In fitness of this the Tribunal should not have oversimplified the nature of disability he suffered and should have treated it as permanent disability.

6. On assessing the evidence before this Court, this Court finds merit in the same and accordingly fixes the functional disability at 50% and reckoning his monthly income at Rs.5,000/- and with 15 as the relevant multiplier the total compensation payable on the head of loss of permanent disability is (Rs.5,000 x 12 x 15% x 50%) Rs.4,50,000/-. On couple of heads of non pecuniary damages too some enhancement is required to be given. However, on few heads of compensation, the amount awarded remains unaltered. The final amount of compensation as determined by this Court is tabulated below:

Heads	Amount Enhanced (Rs.)
For functional disability at 50%.	4,50,000/-
Pain and suffering (enhanced from Rs.30,000 to Rs.45,000/-)	45,000/-
Extra nourishment (enhanced from Rs.3000/- to Rs.10,000/-)	10,000/-
Attendant Charges (enhanced from Rs.1,000/- to Rs.25,000/-)	25,000/-
Facial disfiguration (enhanced from Rs.10,000/- to Rs.50,000/-)	50,000/-
Loss of amenities [Nothing was granted by Tribunal, but this Court awards Rs.10,000/-]	10,000/-
Towards Medical Expenses	1,79,512/-
Transporation charges	5,700/-

Heads	Amount Enhanced (Rs.)
Mental Agony	5,000/-
Towards future medical expenses	10,000/-
Loss of income	20,000/-
Total :	8,10,212/-

Therefore, the award amount is enhanced from Rs. 3,54,212/- to Rs.8,10,212/- (rounded off to Rs.8,11,000/-).

7. Accordingly, the appeal is partially allowed and the award amount is enhanced from Rs. 3,54,212/- to Rs.8,11,000/-. The respondents either jointly or severally are directed to deposit the entire enhanced award amount of compensation along with accrued interest @ 7.5% per annum, less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order and the claimant is permitted to withdraw the same forthwith. The claimant is not entitled to interest amount during the period of delay in filing the appeal. The claimant is directed to pay the necessary court fee for the enhanced portion of the award amount, if any. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1. The Additional Sub-Judge-III, Coimbatore
2. The Section Officer
VR Section, High Court, Madras.(2 copies)

+1cc to Mr.Mr.D.Bhaskaran, Advocate sr.no.65759
+1cc to Mr.Ponraj, Advocate sr.no.65686

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nr 08/06/2018