

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.198 of 2010

V.Saravanan

.. Appellant/Petitioner

vs.

1. M/s.Chetak Logistics Ltd.,
rep.by its Managing Director,
A/3, Sector XI, DLF Madura Road,
Faridabad, Haryana State.
(R1 set exparte before the lower Court.
Notice may be dispensed with)

2. The Oriental Insurance Company Ltd.
Rep.by its Divisional Manager,
Jambu Bala Complex,
Katpadi Road, Vellore.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2009, made in M.C.O.P.No.156 of 2007, on the file of the Motor Accidents Claims Tribunal, (Sub Court) Arni.

For Appellant : Mr.P.Seshadri
R1 : Ex parte in lower Court
For R2 : Mr.N.Sampath

J U D G M E N T

The appeal is preferred by the claimant for enhancement of compensation.

2. The appellant/claimant filed the claim petition in MCOP.No.156 of 2007 for the injuries suffered by him in the accident that took place on 09.08.2007 at about 6.00 p.m., while he was riding in his two wheeler bearing Registration No.TN-23 AA 5274 towards Bangalore direction in a slow manner. The 1st respondent's container lorry bearing Reg.No.HR 38 J 8263 insured with the second respondent, came in the opposite direction and dashed against the two wheeler and in the said accident, the appellant was thrown out from the two wheeler and sustained severe injuries all over his body including head injury. He

took treatment in CMC Hospital, Vellore and subsequently in Agarwal Hospital, Chennai. He underwent two surgeries and spent Rs.2,00,000/- towards medical expenses. As he is still having vomiting and giddiness due to the head injury sustained by him, he has to undergo one more surgery. The petitioner was working as a software Engineer, earning a sum of Rs.25,000/- p.m. Due to the accident, he is not able to work as he was doing earlier. The accident occurred only due to the rash and negligent driving of the first respondent. In view of the accident, the appellant/claimant sustained multiple injuries. The first respondent is the owner of the vehicle and he has insured the vehicle with the second respondent. Therefore, he filed claim petition claiming compensation, for the injuries sustained by him, from the respondents 1 and 2.

3. The first respondent remained ex-parte before the Tribunal. The second respondent filed counter statement and denied all the averments made by the appellant and it is stated that the appellant has to prove his age and income and nature of the injuries and that he had valid driving licence at the time of accident. The appellant also has to prove that the driver of the container lorry had valid driving licence and in view of the same, the respondents are not liable to pay any compensation to the appellant.

4. Before the Tribunal, the claimant was examined himself as P.W.1 and Mr. Shanmugasundaram-doctor was examined as P.W.2 and 11 documents were marked as Ex.P.1 to Ex.P.11 on the side of the appellant. Neither witness was examined nor documents were marked on the side of the respondents.

5. The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the first respondent lorry, insured with the second respondent. Therefore, both the respondents are liable to pay the compensation. The Tribunal has fixed the disability at 45% and awarded Rs.56,250/- towards permanent disability. Along with conventional damages, the tribunal awarded a sum of Rs.1,79,663/- as compensation under the following heads:

Permanent Disability	Rs. 56,250/-
Pain and sufferings	Rs. 2,500/-
Medical expenses as per bills	Rs. 1,12,663/-
Transportation	Rs. 5,750/-
Extra nourishment	Rs. 2,500/-

Permanent Disability	Rs. 56,250/-
Total	Rs.1,79,663/-

7. Not being satisfied with the compensation awarded by the Tribunal, the appellant/claimant is before this Court by way of this appeal.

8. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused all the materials available on record.

9. The only question to be decided in this appeal is whether the appellant is entitled for enhancement of compensation .

10. The appellant was examined as P.W.1 and he has stated about the nature of injuries suffered by him and due to the said injuries, he is not able to work as he was doing earlier. P.W.2-Doctor was examined on the side of the appellant and he had assessed 45% disability. The respondents have not let in any contra evidence to disprove the evidence of the doctor. Hence, the Tribunal has awarded at Rs.1,250/- per percentage of disability and awarded a sum of Rs.56,250/- (45% x Rs.1,250/- = Rs.56,250/-) towards loss of income. The said amount awarded towards permanent disability is meager and the same is enhanced to Rs.90,000/- by awarding Rs.2000/- per percentage of disability. The appellant has deposed in his evidence that he is a software Engineer, but he has not proved the same by adducing substantial evidence. Taking into consideration, the nature of treatment and period of treatment, the Tribunal has awarded a sum of Rs.2,500/- towards pain and suffering and a sum of Rs.2,500/- towards extra nourishment. The Tribunal has not awarded any amount towards attender charges. The appellant/claimant claimed that he was working as Software Engineer and was earning a sum of Rs.25,000/-p.m. and he was not able to work, as done earlier. To substantiate his claim towards loss of earning capacity and future prospects, the claimant has not produced any evidence or documents. Therefore, the appellant is not entitled for any compensation under the head of loss of earning capacity.

11. That apart, the tribunal awarded Rs.2500/- towards pain and sufferings, Rs.2,500/- towards extra nourishment, which sums are on the lower side. Hence, this Court hereby enhances the same as Rs.25,000/- towards pain and sufferings, Rs.10,000/- towards extra nourishment. However, amount awarded under medical expenses and transportation are just and reasonable and therefore, they are hereby confirmed. Thus the amount awarded by the Tribunal is enhanced to Rs.2,43,400/- break up as follows:

Permanent disability	Rs. 90,000/-
Pain and sufferings	Rs. 25,000/-
Medical expenses (as per bills)	Rs.1,12,663/-
Transportation	Rs. 5,750/-
Extra nourishment	Rs. 10,000/-
Total	Rs.2,43,413/-rounded to Rs.2,43,400/-

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,79,663/- (One lakh seventy nine thousand six hundred and sixty three only)) to a sum of Rs.2,43,400/- (Two Lakhs forty three thousand and four hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of deposit and proportionate costs;

(ii) The appellant/claimant is directed to submit his Savings Bank Account Detail along with the copy of his passbook to the Tribunal forthwith;

(iii) The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.156 of 2007, on the file of the Motor Accidents Claims Tribunal, (Sub Court) Arni , within a period of twelve weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the enhanced amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant/claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks thereafter; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

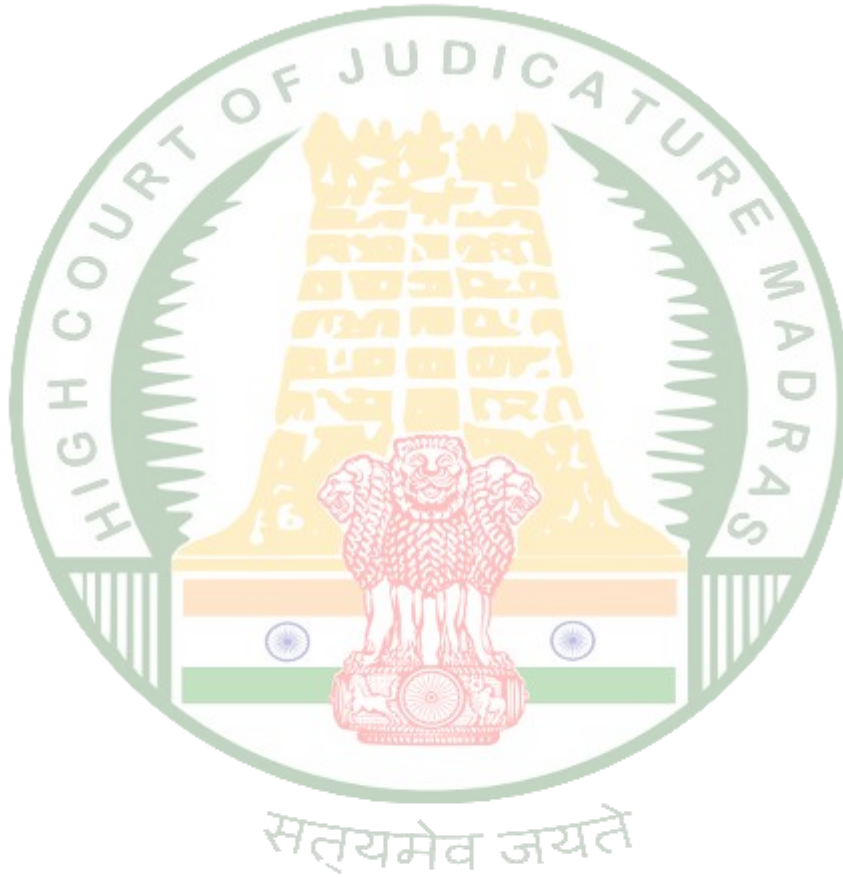
1. The Motor Accidents Claims Tribunal
Sub Court, Arni.

+1 CC to Mr.P. Satheesh Kumar, Advocate sr 19661

+1 CC to Mr.N. Sampath, Advocate sr 19672

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