

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.314 of 2010

Gnanasounthiran

.. Appellant

vs.

1.R.Shanmugam

2.Pondicherry Tourism Transport
Development Corporation Ltd.,
rep.by its Managing Director,
pondicherry.

3.The National Insurance Co., Ltd.,
rep.by its Divisional Manager,
Vellore.

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 23.12.2008 made in M.C.O.P.No.46 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Court) Arni.

For petitioner : Mr.P.Satheeshkumar

For R2 : Mr.J.Chandran

JUDGMENT

This appeal is preferred by the appellant/claimant for enhancement of compensation awarded by the Tribunal.

2. The appellant/claimant filed a claim petition in MCOP.No.1680 of 2005 for the injuries sustained by him in the accident that took place on 17.10.2004 at 12.30 p.m. While the petitioner was travelling in a bus bearing Reg.No.PY-01-L-1881 belonging to second respondent, which was proceeding from Chidambaram to Karaikal near Soorakadu Village, the goods lorry bearing Reg.No.T-39-L-8933, came in the opposite direction and dashed against the petitioner. Due to which, the petitioner had sustained injuries. The accident had occurred only due to

the rash and negligent driving of the first respondent. The first respondent is the owner of the vehicle and the same was insured with the third respondent. Therefore, the claimant filed claim petition claiming compensation from the respondents 1 to 3, for the multiple injuries and consequently amputation of right hand.

3. The respondents 1 and 2 remained exparte before the Tribunal. The third respondent filed a counter statement and denied all the averments made in the claim petition and it is stated that the appellant has to prove his age, income, place, date and time of the accident, injuries, period of treatment and the driver of the bus had valid driving license at the time of accident. The second respondent's driver did not possess any valid and proper license. Hence the third respondent is not liable to pay compensation to the appellant.

4. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Karthikesan-doctor was examined as P.W.2, 10 documents were marked as Exs.P.1 to P.10 on the side of the appellant. Neither witness was examined nor documents were marked on the side of the respondents.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle which was insured with the third respondent and awarded a sum of Rs.1,06,531/- as compensation.

6. Not satisfied with the compensation awarded by the Tribunal, the claimant is before this Court by way of this appeal.

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

8. The Tribunal after appreciating pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by driver of the first respondent. This finding is not challenged by respondents. The only issue in this appeal is whether the compensation awarded is meager or just compensation.

9. It is seen from the records that the petitioner was working as Head Master at the time of accident. He admitted that he has not suffered any monetary loss during the period of treatment and subsequent period. He contended that due to loss of his right hand amputation, his promotion was affected. The

Tribunal had accepted the evidence of P.W.2 and Ex.P10-Disability Certificate and awarded a sum of Rs.80,000/- by fixing Rs.1,000/- per percentage of disability, which is meager.

10. Hence, this Court by fixing Rs.1,500/-per percentage of disability, awards Rs.1,20,000/- towards permanent disability. The Tribunal awarded Rs.20,000/- towards pain and sufferings and the same is hereby enhanced to Rs.30,000/-. The Tribunal has not awarded any amount towards attender charges, extra nourishment and loss of amenities. This Court, taking into consideration, the nature of injuries and treatment taken by appellant awards a sum of Rs.10,000/- each under the above heads. No amount was awarded for the cost of Artificial Limb. Hence, this Court awards a sum of Rs.20,000/- under the said head. Thus, the compensation awarded by the Tribunal is enhanced as follows:

Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Permanent disability	80,000/-	1,20,000/-	enhanced
Loss of amenities	-	10,000/-	granted
Pain and sufferings	-20000	-30000	enhanced
Extra nourishment	-	10,000/-	granted
Transport to Hospital	4,256/-	4,256/-	confirmed
Medical Expenses	2,275/-	2,275/-	confirmed
Attender Charges	-	10,000/-	granted
Artificial Limb		20,000/-	granted
Total	1,06,531/-	2,06,531/-	By enhancing a sum of Rs.1,00,000/-

11. In the result,
i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,06,531 (Rupees One lakh six thousand five hundred and thirty one only) to a sum of Rs.2,06,531/- (Rupees Two lakhs six thousand five hundred and thirty one only) along with interest at the rate of 7.5% p.a. from the date of petition till the 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 MCOP.No.46 of 2005, on the file of the Motor Accident 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 entire award 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

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd
To

The Motor Accident Claims Tribunal
(Subordinate Judge)
Arni.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.Satheeshkumar, Advocate Sr.19662
+lcc to Mr.J.Chandran, Advocate Sr.19762

CMA.No.314 of 2010

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srg 06/06/2017