

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-04-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.653 of 2010

K.Sadasivam

...Appellant/Claimant

Vs

1.M/s.Adyar Ananda Bhavan
No.9, Parameswari Nagar,
Adyar, Chennai - 600 020.
(Set exparte in the trial court)

2.United India Insurance Co. Ltd.,
New No.23, Naniappa Naicken Street,
Park Town, Chennai - 600 003. ...Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.10.2009, made in M.A.C.T.O.P.No.28 of 2006, on the file of the II Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr.M.Swamikannu
For R-2 : No appearance
For R-1 : exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 15.10.2009, made in M.A.C.T.O.P.No.28 of 2006, on the file of the II Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

2. The appellant is the claimant, the first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle. According to the appellant/claimant, on 07.12.2005 at about 19.00 hrs., while the appellant was riding in cycle from west to east on the leftern side of the road in NSC Bose Road, near Ranga Vilas Hotel, near the junction of Armenian Street, a van bearing Regn.No.TN07 AC 3663 came in a rash and negligent manner and dashed against the claimant. In the said accident, the right had wrist and palm of the appellant

was completely smashed. Hence, the appellant filed claim petition before the Tribunal claiming a compensation of Rs.11,00,000/-.

3. The first respondent remained exparte before the tribunal. The second respondent filed counter denying all the averments made by the claimant and submitted that the appellant had failed to prove his age, occupation, income and that the accident had occurred due to the rash and negligent driving of the driver of the vehicle. It is further stated that the quantum of compensation claimed by the appellant on various heads are very high and that the petition has to be dismissed.

4. Before the Tribunal, the appellant examined himself as PW1 and Dr.Armenian R.Sowlee was examined as PW2. Six documents viz. Exs.P1 to P6 were marked on the side of the appellant. No one was examined and no document was marked on the side of the respondents.

5. After analysing the oral and documentary evidence, the Tribunal has come to a conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van insured with the 2nd respondent and awarded a sum of Rs.1,03,000/- as compensation. Not satisfied with the amount of compensation awarded by the Tribunal, the appellant has filed the present appeal for enhancement of compensation.

6. Heard the parties and perused the materials available on record.

7. Though notice have been served and name of the second respondent having been printed in the cause list, there is no representation for them.

8. The learned counsel for the appellant relied upon the following four judgments in support of his contentions -

(i) 2010 (2) TN MAC 356 (SC) in Yadava Kumar v. The Divisional Manager, National Insurance Co. Ltd., and anr.

(ii) 2017 (1) TN MAC 410 (SC) in Sanddep Khanujav. Atul Dande & Anr.

(iii) Civil Appeal Nos.4330-4331 of 2011 in B.Kothandapani v. Tamil Nadu State Transport Corporation Ltd.

(iv) Civil Appeal No.8639 of 2013 in Alexander Anand Kumar v. Divisional Engineer (H)

9. The above cited judgments referred by the learned counsel for the appellant do not have any relevance to the present case and hence the same are not considered by this Court.

10. A perusal of the records, especially Ex.P5 disability certificate would reveal that the appellant had sustained 30% partial disability. The respondent has not let in any evidence to disprove the same. The Tribunal, without giving any reason reduced the same to 20% and awarded a sum of Rs.30,000/- towards partial permanent disability by awarding Rs.1,500/- per percentage of disability which is unsustainable and the same is modified holding that the appellant is entitled for 30% disability. The Tribunal erred in not awarding any amount towards attender charges. Hence, a sum of Rs.2,500/- is awarded under the said head. The appellant has taken treatment as inpatient from 07.12.2005 to 12.12.2005 however, he has not let in any evidence to prove that because of the injuries, he could not do any work as he was doing earlier and suffered monetary loss. In the said circumstances, he is not entitled for any amount towards loss of future earning capacity. However, the amount awarded under all others heads seems to be reasonable and hence they are confirmed. Thus, the award of Rs.1,03,000/- awarded by the Tribunal is hereby enhanced to Rs.1,20,500/-, break-up as follows -

Srl.No.	Particulars	Amt. awarded by the Tribunal - Rs.	Amt. Awarded by this Court - Rs.	Result
1	Loss of earnings	12,000/-	12,000/-	Confirmed
2	Attender charges	-	2,500/-	Awarded
3	Transportation	2,000/-	2,000/-	Confirmed
4	Extra nourishment	2,000/-	2,000/-	Confirmed
5	Damage to cycle	2,000/-	2,000/-	Confirmed
6	Medical expenses	2,000/-	2,000/-	Confirmed
7	Other expenses	1,000/-	1,000/-	Confirmed
8	Disability	30,000/-	45,000/-	Enhanced
9	Pain & Sufferings	32,000/-	32,000/-	Confirmed

Srl.No.	Particulars	Amt. awarded by the Tribunal - Rs.	Amt. Awarded by this Court - Rs.	Result
10	Loss of amenities	10,000/-	10,000/-	Confirmed
11	Loss of expectation of life	10,000/-	10,000/-	Confirmed
	Total	1,03,000/-	1,20,500/-	Enhanced

The rate of interest awarded by the Tribunal @ 9.5% remains unaltered.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

12. The respondent/insurance company is directed to deposit the enhanced award amount alongwith interest and costs, within a period of six weeks from the date of receipt of a copy of this order, after adjusting the amount already deposited, if any. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount alongwith interest and costs, after adjusting the amount already withdrawn if any.

-s/d-

Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

grg

To

Motor Accident Claims Tribunal,
II Judge, Small Causes Court,
Chennai.

+1 cc to M/s.M.Swami Kannu Advocate sr 20643

C.M.A.No.653 of 2010

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