

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1022 of 2003

Dr.R.Ramsingh

..Appellant/Petitioner

Versus

1. M.Chinnasamy

2. National Insurance Co. Ltd.,
81-D Chetty Street,
Thiruchengode-637 211.

3. Dr.D.Vasantha

4. United India Insurance Co.Ltd.,
Cuddalore.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 13.06.2002 passed in MCOP No.209 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Cuddalore.

For Appellant : Mr.S.K.Rakhunathan
For 2nd Respondent : Mr.S.Arun Kumar
For R1,3 and 4 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 13.06.2002 passed in MCOP No.209 of 1999 on the file of the Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Cuddalore.

2. The brief facts of the case are as follows :-

On 04.03.1996, the claimant was travelling along with one T.A.Subramaniam, his sister's husband from Madras to Cuddalore, in a car bearing Registration No.PY-01-C-2022, when the car nearing Thenkodipakkam on Tindivanam-Pondy main road, a lorry bearing Registration No.TN-28-Y-0304, driven by its driver in a rash and negligent manner, dashed against the car. Due to

which, the claimant sustained severe injuries and the claimant's sister husband died on the spot itself. The injured claimant was taken to the JIPMER Hospital, Pondicherry, and surgery was also done to him. The claimant has claimed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) as compensation.

3. The fourth respondent/Insurance Company, in the counter statement, has denied the Insurance of the third respondent vehicle. Further, RC, FC and the driving license of the driver was also denied. Apart from that the claim of Rs.15,00,000/- by the claimant was baseless and without any proof.

4. The Tribunal, after analyzing the evidence and the documents placed before it, has observed that the first respondent is the owner of the lorry and the second respondent is the insurer of the lorry which involved in the accident. Ex.P1 is the copy of the F.I.R, in which, it has been stated that the lorry was driven by its driver in a rash and negligent manner and dashed against the car coming in the opposite direction. A complaint was lodged by the Village Administrative Officer. P.W.1 has also deposed the same. Hence, the Tribunal has observed that the lorry driver is responsible for his rash and negligent driving. Ex.P5 is the copy of the order of the Criminal Court, in which, it has been observed that the lorry driver had admitted the offence before the Criminal Court.

5. Regarding the quantum, the Tribunal after verifying the documents and evidence placed before it awarded a sum of Rs.5,62,600/- as compensation under the following heads.

Heads	Amount awarded by the Tribunal (Rs.)
For Loss of Income	2,91,600.00
For Treatment Charges	2,00,000.00
For dis-figuration in the face	15,000.00
For Loss of Teeth	10,000.00
For Pain and Suffering	15,000.00
For personal attendant expenses	3,000.00
For Transport Expenses	8,000.00
For Medical Expenses	10,000.00
For Future Inconvenience and difficulties	10,000.00
Total compensation	5,62,600.00

Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

6. In the grounds of appeal, it has been stated that the Tribunal has committed an error in fixing compensation at Rs.5,62,600/-, since there is a clear evidence by the appellant that his monthly income is Rs.9,000/-. It is also stated that in the absence of any contra evidence, the monthly income of the claimant should have been taken as such. In other words, the income of the claimant was not properly considered, in spite of the documents relating to Income Tax returns Exs.P7 to P10 were filed. The Tribunal has also committed an error by fixing the disability at 30%, when the disability in respect of bodily injury is 75%. Hence, the disability has to be taken by the Tribunal at 100%. The other grievances raised in the appeal is that when the medical expenses was claimed at Rs.2,10,931/- along with the valid proof of documents, the Tribunal has awarded only a sum of Rs.2,00,000/-. The compensation awarded by the Tribunal, towards loss of pain and suffering, is also meager. The sum awarded in other categories are also low and the Tribunal has not considered the further medical expenses.

7. Heard both sides and perused the document available on records.

8. On a perusal of the evidence and documents, it is seen that the claimant has sustained severe injuries and Ex.P73 - Disability Certificate was marked, which was issued by P.W.3. As per the disability certificate, the claimant has sustained multiple injuries and faciomazillary fracture on the skull. The claimant underwent the treatment at JIPMER Hospital, Puducherry as inpatient from 05.03.1996 to 25.03.1996 and subsequently he had taken treatment at Apollo Hospital, Chennai from 25.03.1996 to 01.05.1996. The claimant was also given treatment regarding Cardiac and Facio-maxillary Plastic Surgery Unit. It is also observed that the claimant sustained fracture injuries in the orbital cavity of the left eye. Due to the injuries, the claimant suffered from pain and difficulty in attending his day to day routine work and he has also suffering from Cardiac problem. According to the Doctor, the claimant sustained 75% permanent disability, due to the injuries. The Tribunal after observing the document issued by Ophthalmic surgeon P.W.4 and has analyzed the sufferings faced by the claimant, especially, when the claimant is a Doctor who has lost his efficiency by all these disability with regard to the eye vision, cardio problem a separate document has been given to assess the disability at 30%.

9. Hence, the Tribunal has taken his monthly income at Rs.2,700/- and assessed the annual income at Rs.32,400/- and arrived at the loss of income at Rs.2,91,600/-. Regarding the

expenses incurred by the claimant for the treatment, the Tribunal has considered all the documents, receipts (Exs.P11to 46) and awarded a sum of Rs.2,00,000/- against the claim made by the claimant at Rs.2,32,731/-.

10. With regard to the sum awarded for pain and suffering, since the claimant has sustained severe injuries and underwent surgeries and also treated as inpatient for a long time, this Court inclined to enhance the sum, accordingly, the sum under the head for pain and suffering is enhanced to Rs.20,000/-. The sum awarded for dis-figuration, loss of teeth and personal attendant expenses, medical expenses are found properly considered by the Tribunal, hence does not require any modification. In view of the nature of injury and the period of treatment, the sum awarded for 'personal attendant expenses' is enhanced from Rs.3,000/- to Rs.5,000/-. Further, for the transport expenses through the claimant has furnished the documents, trip sheet for Rs.22,129/-, the tribunal has not discussed anything about the genuinity of the document filed in support of the claim for transport expenses, but awarded a sum of Rs.8,000/- towards the same. This Court by considering the documents filed by the claimant, has enhanced the amount to Rs.10,000/- towards the transport expenses. In view of the above enhancement, the sum awarded by the Tribunal is modified under various heads as follows :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Loss of Income	2,91,600.00	2,91,600.00
For Treatment Charges	2,00,000.00	2,00,000.00
For dis-figuration in the face	15,000.00	15,000.00
For Loss of Teeth	10,000.00	10,000.00
For Pain and Suffering	15,000.00	20,000.00
For personal attendant expenses	3,000.00	5,000.00
For Transport Expenses	8,000.00	10,000.00
For Medical Expenses	10,000.00	10,000.00
For Future Inconvenience and difficulties	10,000.00	10,000.00
Total compensation	5,62,600.00	5,71,600.00

11. In view of this above said enhancement, this Civil Miscellaneous Appeal is partly allowed. No costs.

12. Accordingly, the 2nd respondent/National Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the enhancement awarded by this Court, with interest at 7.5% per annum and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon. The appellant/claimant is directed to pay the additional Court Fee for the enhanced amount.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gbi/lpp

To

1. The Additional District Judge-cum-Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Cuddalore.

+1 cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.72482

+1 cc to Mr.S.Arunkumar, Advocate, S.R.No.72655

CMA.No.1022 of 2003

SSD(CO)
SSM(21/05/2019)

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