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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.1693 of 2007

Sithaiah

..Appellant / Petitioner

- Vs -

1. C.Sreenivasalu Reddy

2. The Oriental Insurance Company Ltd.,
Motor III Party Claims Office,
No.8, Esplanade, Chennai - 108.

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 04.02.2004 and made in M.C.O.P.No.288 of 2002, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-IV, Poonamallee.

For Appellants : M/s.V.Jayanthi Bhaskar

For Respondent : M/s.M.Krishnamoorthy for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree passed in MCOP.No.288 of 2002, dated 04.02.2004, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-IV, Poonamallee.

2.The brief facts leading to the claim application are as follows:-

On 02.06.2002, at about 1.00 am, when the petitioner was travelling in a mini lorry bearing Registration No.AP37U8523 on GNT Road, Kavaraipatti towards Madras, at that time, a lorry bearing registration No.AP04U2646, driven by its driver in a rash and negligent manner in the opposite direction, on the extreme wrong side of the road, dashed against the mini lorry and the petitioner sustained grievous injuries. The petitioner claimed a sum of Rs.4,00,000/- for the injury sustained by him, for the medical expenses, for loss of earning and other related losses.



3.The second respondent/Insurance Company in their counter statement has denied the rash and negligent driving on the part of the first respondent lorry. The other fact mentioned in the counter statement is that the above said accident was not informed to the Insurance Company and the vehicular documents, copy of policy and the driving licence were also not produced to this respondent. It is also stated that it is only the driver of the mini lorry bearing Registration No. AP37U8523 driven by its driver in a rash and negligent manner and hit against the first respondent vehicle. The FIR also fabricated one. The further averment raised in the counter statement is that the driver of the mini lorry is the tort feisor and the petitioner can proceed only against the owner of the mini lorry. The other aspects regarding the compensation claimed by the claimant under various heads has been stated as an exaggerated and without any basis.

4.The Tribunal, upon analyzing the evidence and documents, has fixed liability on the first respondent lorry holding negligence on the part of the driver of the lorry. The Tribunal has also awarded a sum of Rs.1,40,350/- as compensation under various heads as follows:-

Heads	Sum awarded by the Tribunal (Rs.)
Future loss of income	60,000.00
Pain and Sufferings	30,00.00
Permanent disability 60%	35,000.00
Medical expenses	15,380.00
Total Compensation	1,40,380.00

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

6.In the grounds of appeal, the appellant has stated that the Tribunal has failed to appreciate the evidence of P.W.1 and P.W.2. It is further stated that the Tribunal ought to have considered the injuries sustained by the claimant, disability and the loss of earning capacity and awarded Rs.4,00,000/- as compensation instead of awarding Rs.1,40,350/-. The other ground raised in the appeal is that the Tribunal has not considered the evidence of P.W.2 who had stated that the claimant required one more surgery for the injuries sustained by him. Hence, the evidence of P.W.2 ought to have considered and the sum of Rs.20,000/- ought to have been awarded.

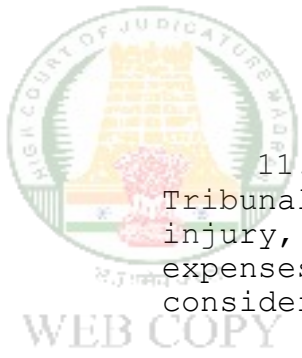


7. The other grievance raised by the appellant is that the daily income fixed by the Tribunal at Rs.50 per day is not at all justified. The sum has to be determined as per the evidence of P.W.1, who had clearly deposed that he was earning Rs.150 per day as coolie. The other grievance raised is that instead of applying the multiplier of 13, the Tribunal has applied 5, which is not proper. The sum awarded under pain and sufferings and medical expenses are not reasonable. Hence, the appellant sought for enhancement of the award passed by the Tribunal.

8. It is also argued by the appellant that when Doctor has assessed the disability at 60%, the Tribunal has awarded only Rs.35,000/- for disability. The Tribunal ought to have applied proper multiplier method for assessing the loss of income. It is argued by the appellant that the petitioner sustained severe injuries and the Doctor has also clearly deposed before the Tribunal, that his liver wall bladder, stomach and small intestine were all saturated and there are also wounds in the said area and because of the said injury, the appellant suffering from indigestion, loss of appetite and severe pain in the stomach, by considering all these aspects, the Doctor P.W.2 has assessed the disability at 60%.

9. On the side of the respondent, it is argued that there is no fracture injury sustained by the appellant, hence, the assessment made by Doctor (Thiyagarajan) is highly excessive and further, a suggestion was made that one more surgery needs to be done to the appellant in future. But no document has been filed to that effect. Hence, it is argued by the respondent that the sum determined by the Tribunal is very much reasonable.

10. On the other hand, the appellant has argued that the Tribunal has not properly considered the disability sustained by the petitioner and therefore, it has to be properly calculated. It is also argued by the appellant that the appellant was treated as in-patient from 02.06.2002 to 14.06.2002 at Chennai Government General Hospital, for which Ex.P2 Discharge Summary was produced before the Tribunal. Ex.P3 is the document which also reveals the fact that the appellant was treated from 14.06.2002 to 27.06.2002. Hence, the argument of the appellant is that when the petitioner was a coolie at the time of accident and he was earning Rs.150 per day, the income determined by the Tribunal at Rs.50 per day is not justified. Further, the order of the Tribunal in deducting 1/3rd for the personal expenses is also not proper. It is also argued by the appellant that the Tribunal has not awarded any sum for attender charges, nourishment and loss of amenities and these aspects have not been considered by the Tribunal.



11. On hearing both sides and also the sum awarded by the Tribunal, based on the evidence relating to the nature of injury, disability and the loss of income and the related expenses that was incurred by the Tribunal has to be properly considered.

12. On perusal of records and evidence, it is observed that the claimant/appellant was 52 years at the time of accident, his income has been stated as Rs.150 per day, but the Tribunal has fixed only at Rs.50 per day against the claim. Hence, this Court is inclined to fix the monthly income of the appellant at Rs.100 per day and accordingly calculated the annual income as Rs.36,000/- $36,000 \times 11 \times 25\% = 99,000/-$. The disability was assessed by the Tribunal at 60% in the absence of any fracture or other grievous injury, hence, this Court takes the disability at 25% and calculated the loss of income. For pain and sufferings, awarding of Rs.50,000/- would be reasonable. The sum awarded for medical expenses based on Ex.P4 is very much reasonable and hence the said sum need not be modified. For Transport expenses, it is enhanced at Rs.10,000/-. It is observed that there is no sum was awarded for extra nourishment, hence, a sum of Rs.20,000/- is awarded for extra nourishment and a sum of Rs.10,000/- for the attendant charges. Since the Tribunal itself has observed that the petitioner was a coolie, definitely he would have suffered loss of income during the period of treatment and also the future loss of income, due to the disability and therefore, the inconvenience caused to the claimant in the said accident due to the disability has to be properly considered. Accordingly, the sum awarded under the head disability is enhanced to Rs.50,000/-.

13. The sum awarded by the Tribunal is modified by this Court as follows:-

Heads	Sum Awarded by the Tribunal	Sum Modified by this Court
Disability	Rs.35,000/-	Rs.50,000/-
Pain and Sufferings	Rs.30,000/-	Rs.50,000/-
Medical Expenses	Rs.15,380/-	Rs.15,380/-
Loss of Income	Rs.60,000/-	Rs.99,000/-
Extra Nourishment	-	Rs.20,000/-
Attendant Charges	-	Rs.10,000/-
Transport Expenses	-	Rs.10,000/-
Total	Rs.1,40,380/-	Rs.2,54,380/-



14. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The appellant is directed to the additional Court fee if any, for the enhanced award amount.

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15. Accordingly, the second respondent/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 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 interest for the modified amount shall carry 7.5% per annum.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court-IV, Poonamallee.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.74452

CMA.No.1693 of 2007

PP (CO)
SSM(23/09/2019) .