IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2037 of 2007

K.Ponnusamy .. Appellant/Claimant

Versus

1.B.Arumugam
(1st Repondent expute)

2.The Branch Manager,
United India Insurance Company Limited,
66-68, Gandhi Road,
Kancheepuram. .. Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree of the Sub-Court, Kancheepuram, Motor Accident Claims Tribunal in M.A.C.T.O.P.No.292 of 2002 dated 09.11.2005.

For Appellant : Mr.N.Ramanujam

For Respondents : Mr.M.Krishnamoorthy, for R2
R1-Ex parte

J U D G M E N T

The claimant who is the appellant herein has preferred the appeal against the judgment and decree made in M.A.C.T.O.P.No.292 of 2002 dated 09.11.2005.

2.The facts leading to the claim application are as follows:- On 27.01.2001 at about 5.45 pm, the petitioner was travelling in a Government bus bearing Registration No.TN 32 N 1151, which was proceeding from Madras in a normal speed, at that time, a lorry bearing Registration No.TAS 9450 belonged to the first respondent, which came in the opposite direction driven by its driver in a rash and negligent manner, attempted to overtake the vehicle and came to the wrong side of the road and dashed against the Government bus, in which the petitioner was travelling and the petitioner sustained multiple fracture

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and other injuries all over the body, for which the petitioner has claimed a compensation of a sum of Rs.5,00,000/- as compensation.

3.The second respondent has filed counter statement denying the rash and negligent driving on the part of the driver and placed the liability on the driver of the Government Transport bus who drove the vehicle in the middle of the road without giving space for the on coming vehicle.

4.The Tribunal after analyzing the evidence and documents, has fixed the liability on the respondent/Insurance company and awarded a sum of Rs.79,164/- as compensation, by considering the age, nature of injury, disability and the medical expenses. Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

5.The grounds raised by the appellant in this appeal is the sum awarded by the Tribunal is very meager and the Tribunal ought to have awarded interest at 12%. The pecuniary loss to the family members was not considered, the disability sustained by the petitioner was also not considered by the Tribunal. The disability certificate placed before the Tribunal at 30% by way of medical evidence was also not considered by the Tribunal. Hence, the claimant/appellant has preferred this appeal for enhancement of the award.

6.Heard both sides and perused the documents available on record.

7.On perusal of the above award, it is seen that the claim was made for Rs.5 lakhs. With regard to the injuries sustained by the petitioner and also disability, Exhibits 1 to 29, were filed by the petitioner before the Tribunal.

8.It is argued by the appellant that surgery was done to the claimant by implanting metal plates and he also sustained another injury on his right cheek. Ex.P15 is the discharge summary, which discloses the fact that the claimant underwent treatment from 25.06.2001 to 06.07.2001. The medical documents also discloses the fact that the claimant sustained grievous injury of fracture, for which surgery was also done.

9.On perusal of the sum awarded by the Tribunal, it is seen that the Tribunal by taking into considering the fracture injuries and disability sustained by the claimant, has awarded the reasonable sum under various heads. Hence, this Court does not wants to interfere with the said amount. However, this Court inclined to award some amount under the head "Nourishment". Accordingly, a sum of Rs.30,000/- is awarded under the said head.

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10.In view of the said fracture injuries and the period of treatment, the petitioner would have caused pain and sufferings. Hence, this Court is inclined to enhance the amount awarded by the Tribunal.

11.The sum awarded by the Tribunal is enhanced by this Court as follows:-

Heads	Amount awarded by the Tribunal (Rs.)	Amount enhanced by this Court (Rs.)
Pain and Sufferings	20,000/-	20,000/-
Medical Expenses	34,164/-	34,164/-
Transport Expenses	5,000/-	5,000/-
Partial Permanent Disability	20,000/-	20,000/-
Nourishment		30,000/-
Total	79,164/-	1,09,164/-

12.In the result, the civil miscellaneous appeal is partly allowed. No costs.

13.Accordingly, the respondent Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the enhancement of 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 bank account through RTGS within one week thereon. The enhanced amount shall carry the same rate of interest as awareded by the Tribunal.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

AT

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To
1. The Subordinate Judge Court,
(Motor Accident Claims Tribunal),
Kancheepuram.

+2cc to Mr.N.Ramanujam, Advocate SR.66940
+1cc to Mr.M.Krishnamoorthy, Advocate SR.67024

C.M.A. No.2037 of 2007

KS(CO)
CB(24/10/2019)

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