

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1854 of 2005

Thangavel

... Appellant/Petitioner

Versus

1.A.Govindaraju

2.United India Insurance Company Limited,
Divisional Office,
1170, Mettur Road,
Erode.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 24.1.2005 made in M.C.O.P.No.722 of 2002 on the file of the Motor Accident Claims Tribunal (2nd Additional Sub Judge), Erode.

For Appellant : Mr.S.Kaithaimalai Kumaran

For 1st Respondent : ----

For 2nd Respondent: Mr.Vijayaraghavan

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 24.01.2005 made in M.C.O.P.No.722 of 2002 on the file of the Motor Accident Claims Tribunal (Second Additional Subordinate Judge) Erode.

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

On 05.09.2001 at about 11.00 p.m., when the petitioner was proceeding in his motor cycle bearing Registration No. TAZ 2022 on the Cauvery Road, Erode from south to north, a Mini Door Auto bearing Registration No.TN 33 P 1285 was driven by its driver in a rash and negligent manner and hit against the petitioner and he was thrown away from his vehicle and sustained severe injuries. The accident was occurred due to rash and negligent driving on the part of driver of the said auto. Hence, the

claimant has claimed a sum of Rs.5,00,000/- as compensation for the injury, disability, medical expenses and loss of income.

3. The 1st respondent has denied the allegation that the accident was occurred only due to the negligent act of the driver of the auto and the sum claimed by the claimant is also stated to be excessive.

4. The 2nd respondent-Insurance Company has stated in the counter statement that the said accident was occurred by the involvement of two vehicles and since the owner and driver of the motorcycle were not added as a necessary party, the petition is liable to be dismissed. The Insurance Company has denied the claim with regard to possession of driving license and permanent disability on the whole.

5. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the said accident was occurred due to rash and negligent driving on the part of the driver of Mini Auto and the liability is fixed on the Insurance Company. The Tribunal has also analysed the evidence and documents with regard to the average income, injury and the percentage of disability and awarded a sum of Rs.83,000/- as compensation. Aggrieved against the said award, the claimant has preferred this appeal.

6. In the grounds of appeal, the appellant/claimant has stated that the appellant sustained grievous injuries and he was under treatment for nearly 20 days as inpatient and operation was also done to him for his fracture injury, whereas, the Tribunal has not considered all these aspects. The permanent disability sustained by the appellant was not taken into consideration by the Tribunal. The other aspects raised in the appeal are that for the loss of earning power during the period of treatment, no sum has been awarded. For the permanent disability, no sum was awarded and the medical bills as per Ex.A8 was also not considered properly by the Tribunal.

7. Heard both sides.

8. On perusal of records, it is observed that the injured person is 28 years at the time of accident and his occupation has been stated as Automobile Electrician and his monthly income has been stated as Rs.10,000/- per month. These aspects were not vehemently opposed by the respondent Insurance Company. On perusal of the accident register, it is observed that the claimant sustained 7 injuries and among the said 7 injuries, 3 injuries are grievous in nature. It is also observed that the petitioner was treated as inpatient for nearly 20 days and surgery was also done to him and further, for the medical

expenses also, bills were produced before the Tribunal. The main grievance argued by the appellant is that when there was a disability of 25% sustained by the claimant as per Ex.A8 and PW2 was also examined before the Tribunal, the Tribunal has not considered the same and has not awarded any sum for that. It is a clear evidence of PW2 that inspite of surgery, he has sustained 25% of disability and his occupation as electrician is very much affected. The further argument advanced by the appellant is that when the evidence placed before the Tribunal that he was taking treatment for nearly 20 days as inpatient and the loss of income during the treatment period was also not considered by the Tribunal. The Tribunal has awarded Rs.83,000/- under the following heads:

Heads	Amount awarded by the Tribunal
For grievous injury	10,000.00
For Pain and suffering	5,000.00
For Nourishment	5,000.00
For Medical expenses	63,000.00
TOTAL	83,000.00

9. Hence, it is observed that the appellant/claimant has sustained 25% of disability and as per the argument of the appellant, no sum has been awarded under the said head. Only a sum of Rs.10,000/- was ordered for the grievous injury and hence, it has to be properly considered. In view of the evidence and documents filed by the appellant/claimant, by taking into consideration the 25% disability, it has to be awarded a sum of Rs.25,000/- is proper and reasonable. With regard to the pain and suffering, considering the fact that the claimant had underwent surgery and he was also treated for nearly 20 days as inpatient, the sum has to be awarded at Rs.10,000/-. Since, it is the fact that he underwent surgery and also treated as inpatient, no proper sum was awarded for the attenders charges and it has to be awarded at Rs.5000/- and for the transport charges Rs.5000/- has to be awarded. Hence, this Court modified the award under the following heads:

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
For grievous Injury & Disability	10,000.00	25,000.00

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
For Pain and Suffering	5,000.00	10,000.00
For Attenders Charges	-	5,000.00
For Nourishment	5,000.00	5,000.00
For Transport expenses	-	5,000.00
For Medical expenses	63,000.00	63,000.00
TOTAL	83,000.00	1,13,000.00

10. With the above enhancement, this Civil Miscellaneous Appeal is allowed. No costs.

11. Accordingly, the respondents are directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed 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 claimant's bank account through RTGS within one week thereon. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 9% 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,
(2nd Additional Sub Judge), Erode.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.S.Kaithaimalai Kumaran, Advocate Sr.No.70492
+1 cc to Mr.N.Vijayaraghavan, Advocate Sr.No.71363

CMA.No.1854 of 2005

SSV(CO)
CSL/03.12.2018