

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE Tmt.JUSTICE S.RAMATHILAGAM

CMA.No.220 of 2006

Sudhakar

...Appellant/Petitioner

Versus

1. S.Syed Lathif

2. The United India Insurance Co.Ltd.,
Motor III Party Claims Office,
No.38, Anna Salai, Chennai - 2.

...Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.04.2005 made in M.C.O.P.No.3718 of 2001 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : M/s.Y.Jayanthi Bhaskar
for Mr.J.Mahalingam

For R2 : Mr.R.Ravichandran

JUDGMENT

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This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 18.04.2005 made in M.C.O.P.No.3718 of 2001 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

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

On 29.04.2001 at about 9.30 a.m., when the claimant and one Kamalakannan were proceeding from north to south direction in the Motor Cycle bearing Registration No.TN-22-J-8632, from Chennai to Melmaruvathur, at the time a lorry, belonging to the first respondent, bearing Registration No.TN-28-Y-1339, which came in the opposite direction, dashed against the Motor Cycle. The claimant sustained grievous injuries including fractures and the other person Kamalakannan also sustained fatal injuries. As the claimant was admitted in the hospital and given treatment, he incurred medical expenses, disability and loss of income. Hence, the claimant has claimed a sum of Rs.1,50,000/- as compensation.

3. The second respondent/Insurance Company, in the counter statement, has denied the accident and contended that the accident occurred due to the rash and negligent driving on the part of the rider of the Motor Cycle. However, details regarding the age, employment and income of the claimant were denied and also the disability and medical expenses. On the whole, the claim made by the claimant is highly excessive.

4. The Tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.31,000/- by fixing the liability on the respondents and further directed to deposit the award amount individually and collectively with interest at 9% per annum. Aggrieved against the said award, the claimant has preferred this appeal for enhancement.

5. In the grounds of appeal, the appellant/claimant has stated that he sustained injuries in the accident. According to the appellant, as his occupation is milk vendor, his earning capacity is very much affected because of the permanent disability. Hence, the grievances of the appellant is that, when the Doctor has given the disability at 25%, the Tribunal has taken the disability at 10% without any basis and the loss of income calculated is also on the very lower side. Hence, the loss of income for 10 years has to be assessed and the sum awarded under the various heads viz., pain and suffering, medical expenses and nourishment have to be properly considered.

6. The Tribunal, after assessing the evidence and documents, has awarded a sum of Rs.31,000/- under the following heads :

Head	Amount awarded by the Tribunal (Rs.)
For Loss of income (Rs.1,000*10 years)	10,000.00
For Pain and Suffering	5,000.00
For Transport Charges	1,000.00
For extra Nourishment	2,000.00
For damage to the motorcycle	3,000.00
For permanent disability	10,000.00
Total Compensation	31,000.00

7. On the side of the appellant, it is vehemently argued that the claimant sustained fracture injury and he was also under treatment as in-patient. Ex.P4, the document, which reveals that the claimant was also taken treatment as out patient. The further evidence by P.W.3 also proves the fact that the claimant has sustained 25% permanent disability and the disability certificate Ex.P6 was also filed to substantiate the same. It is observed by the Tribunal that for the fracture in the clavicle bone no surgery was conducted. Hence, the disability was taken at 10% as against the disability assessed by the Doctor at 25%. The Tribunal, after verifying the documents and also in the absence of any proof as to the occupation of the claimant, assessed his income at Rs.3,000/- per month. Hence, the loss of income for 10 months was assessed at Rs.10,000/- by fixing 10% towards partial and permanent disability.

8. On the side of the respondent, it is argued that when considering the nature of injury and percentage of disability, the sum awarded under the various heads are correct.

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

10. On a perusal of the records, it is seen that there is no documents were produced for claiming loss of income. However, only for the fracture, the disability certificate given by the Doctor at 25% was produced but the Tribunal has taken the disability only at 10%. Though, it is vehemently argued by the respondent/Insurance Company that considering the nature of injury, there would not be any loss of income or future loss of income due to the injury and disability, this Court is of the considered view that, it is quite reasonable and proper to take the disability at 25% and Rs.1,000/- per percentage will be a reasonable sum for calculating the loss of income. Accordingly, the loss of income is calculated by taking the disability at 25% x 1,000 = Rs.25,000/-. The further argument made on the side of the claimant is that, no sum has been awarded for medical expenses and the sum awarded for pain and suffering is also on the meager side. Considering the injuries suffered by the claimant and the period of treatment, a sum of Rs.5,000/- is awarded towards medical expenses and under the head pain and suffering a sum of Rs.10,000/- is awarded, enhancing the amount awarded by the tribunal at Rs.5,000/-. Since, the sum awarded under the other heads viz., Transport Charges, Extra Nourishment, Damage to the Motor Cycle, Disability are found reasonable, no modification is made on the said amounts.

11. The enhancement is as follows :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount Modified by this Court (Rs.)
Loss of income	10,000.00	25,000.00
Pain and Suffering	5,000.00	10,000.00
Transport Charges	1,000.00	1,000.00
Extra Nourishment	2,000.00	2,000.00
Damage to the Motor Cycle	3,000.00	3,000.00
Disability	10,000.00	10,000.00
Medical Expenses	-	5,000.00
TOTAL	31,000.00	56,000.00

12. In view of the above enhancement, this Civil Miscellaneous Appeal is allowed. No costs.

13. Accordingly, the respondents are directed to deposit the entire award amount, in respect of above Appeal as per the

enhancement of this Court, with interest and costs, awarded by 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 awarded by the Tribunal. The claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

lpp

To

1. The Motor Accident Claims Tribunal,
(Chief Judge, Court of Small Causes)
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.J.Mahalingam, Advocate, S.R.No.69553

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.69067

CMA.No.220 of 2006

PP(CO)
CS/15/10/2019

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