

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2018

Coram

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3211 of 2010

D.Rathinasamy ... Appellant/Petitioner
Vs.

1.V.Karuppusamy
2.B.Jagajothi
3.The National Insurance Company Ltd.,
Divisional Office,
State Bank Road,
Coimbatore. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgement and decree made in M.C.O.P.No.81 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Judge, Udumalpet, dated 18.9.2009.

For Appellant : Mr.J.Pothiraj

For Respondents : Mr.I.Abrar MD Abdullah for R1
Mr.M.N.Balakrishnan for R2
Mr.Arunkumar for R3

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.81 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Judge, Udumalpet.

2. The brief case of the appellant / claimant is as follows :

On 14.08.2006, the appellant was riding his two wheeler bearing Registration No.TN 37 AP 5781 on Pollachi Coimbatore main road and at about 6.45 p.m., when he was nearing Kinathukadvu, a speeding Tata Ace Mini Auto bearing registration No.TN 37 M 2768 belonging to the second respondent, which was driven by the first respondent, hit the two wheeler, as a result of which, the appellant was thrown out from the two wheeler and sustained injuries all over his body. Immediately he was rushed to K.J.Hospital at Coimbatore. According to the appellant, rash and negligent driving of the driver of the

Tata Ace Mini Auto, was the cause of the accident and that since the second respondent's vehicle was insured with the third respondent / National Insurance Company Limited, Coimbatore, both of them are jointly and severally liable to pay compensation to the appellant.

3. The first respondent remained absent before the Tribunal and he was set exparte.

4. After considering the entire evidence on record, the learned Sub Judge, Udumalaipettai, awarded a compensation of Rs.7,36,000/-, together with interest at the rate of 7.5% per annum to the appellant. The various heads under which compensation was awarded in M.C.O.P.No.81 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Judge, Udumalpet is extracted hereunder :

Sl.No.	Heads	Amount in Rs.
1.	Pain and sufferings	25,000
2.	Medical expenses	6,30,933
3.	35% permanent disability	35,000
4.	Loss of income (Rs.15,000 x3)	45,000
	Total	7,35,933 rounded off to Rs.7,36,000/ -

Not satisfied with the quantum of compensation, the appellant has filed the present appeal seeking enhancement of the award amount.

5. Mr.J.Pothiraj, learned counsel appearing for the appellant would contend that the appellant had sustained the following injuries :

".....Fracture right Temporal bone with Subdural Haematoma with Temporal Lobe Laceration with Brain Oedema with Left Parieto Temporal Intracerebral Haemorrhage".

He would further contend that multiple surgeries were performed in the K.J.Hospital, Coimbatore, for the injuries sustained by the appellant. He has also brought the attention of this Court to the discharge summary (Ex.P7), wherein it is stated thus :

"Preoperative and Postoperative Diagnosis :
Operative site bone deficit".

He would therefore contend that the award passed by the Tribunal is very meagre.

6. Per contra, the learned counsel appearing for the third respondent/ National Insurance Company Limited, Coimbatore, would contend that the Tribunal had rightly awarded a compensation of Rs.7,36,000/-, after considering the settled legal principles, which were in vogue at the time of passing the award. He would further contend that the quantum of compensation fixed by the Tribunal is Rs.7,36,000/-, need not be interfered with in the present appeal.

7. Dr.Sekar (P.W.2) has assessed the partial permanent disability at 35%, as there is a head injury. There is nothing to suggest from the discharge summaries (Ex.P6 and Ex.P7) of K.J.Hospital, Coimbatore that there is a functional disability for the appellant/injured. In the instant case, the contention of the appellant is that he is a business man, owning two lorries, car and a Metodor Van and his monthly income is fixed as Rs.15,000/-, by the Tribunal. According to him on account of the accident, he could not attend to his routine work as before.

8.As per the decision rendered by the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another, reported in 2011 (1) SCC 343, since there is no functional disability as far as the present case is concerned, the multiplier method need not be adopted. However, the Tribunal has awarded 35,000/- for the partial permanent disability and it appears to be too low. Therefore, a sum of Rs.70,000/- is awarded towards partial permanent disability. Apart from this amount, the appellant is entitled for a sum of Rs.25,000/- towards loss of amenities, a sum of Rs.10,000/- towards transportation, a sum of Rs.10,000/- towards extra nourishment and a sum of Rs. 5,000/- towards attender's charges. In fact, the trial Court has not awarded any amount towards loss of amenities, extra nourishment and attender's charges.

9.In fine, the amount of compensation awarded by the Tribunal is enhanced from 7,36,000/- to 8,20,933/-, as extracted hereunder :

Sl.No.	Heads	Amount in Rs.
1.	Medical expenses	6,30,933
2.	Pain and sufferings	25,000
3.	Transportation	10,000
4.	Extra Nourishment	10,000
5.	Attenders charges	5,000
6.	Partial Permanent disability	70,000

Sl.No.	Heads	Amount in Rs.
7.	Loss of amenities	25,000
8.	Loss of income (Rs.15,000 x3)	45,000
	Total	8,20,933

Accordingly, a total a sum of Rs.8,20,933/- is awarded as compensation together with interest at 7.5% per annum.

10. At this juncture, the learned counsel for the third respondent/ National Insurance Company Limited, Coimbatore would contend that the owner of the vehicle, namely the second respondent did not produce any driving licence to show that the driver of the vehicle, the first respondent was having a valid driving licence on the date of accident. In fact, paragraph No.5 of the order, the Tribunal has observed that the owner of the vehicle did not produce any driving licence. However, the Tribunal, after recording the said finding, did not direct the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the driver. It is pertinent to note that the National Insurance Company did not file any appeal against the orders passed by the tribunal. However, if the Insurance Company is so advised, it is always open to them to file a separate proceedings to recover the amount from the owner of the vehicle in the manner known to law.

11. In the result,

(i) the appeal is partly allowed. No costs.

(ii) A sum of Rs.8,20,933/- (Rupees Eight lakhs twenty thousand nine hundred and thirty three only) is awarded to the appellant as compensation together with interest at 7.5 % per annum. The 3rd respondent is directed to deposit the enhanced compensation amount along with interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.81 of 2007, on the file of the Motor Accident Claims Tribunal, Sub Judge, Udumalpet, within a period of four weeks from the date of receipt of a copy of this order.

(iii) The appellant is at liberty to withdraw the same after following the due process of law.

(iv) The appellant shall pay necessary Court fee, if any on the enhanced compensation amount.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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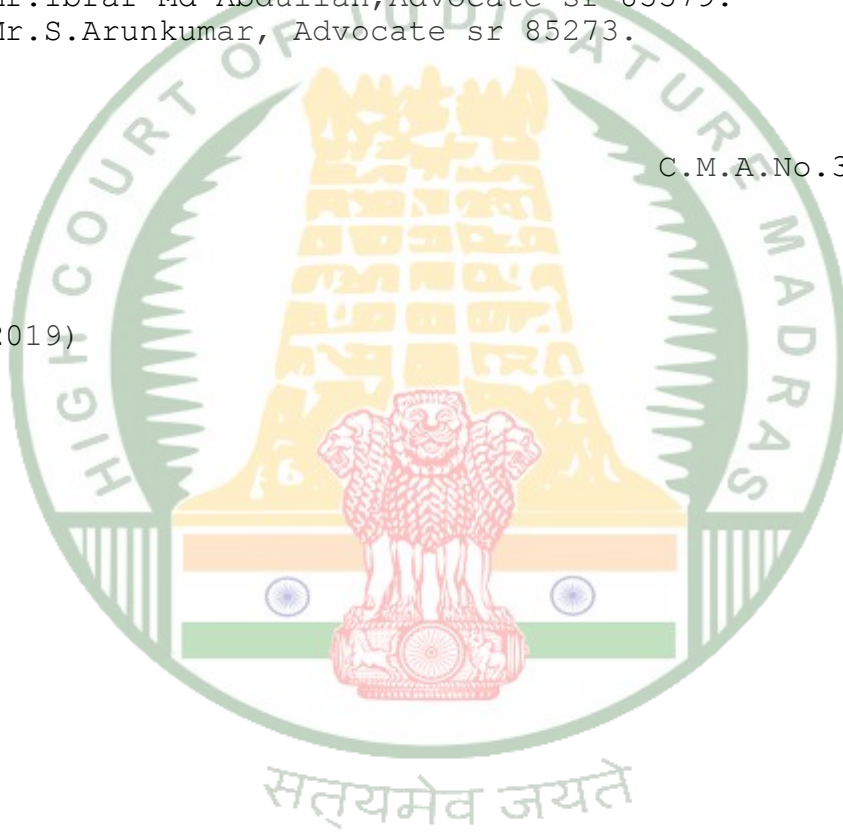
1. The Subordinate Judge
Motor Accident Claims Tribunal,
Udumalpet,

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

- +1 CC to Mr.J.Pothiraj, Advocate sr 85163.
- +1 CC to Mr.Ibrar Md Abdullah, Advocate sr 85579.
- +1 CC to Mr.S.Arunkumar, Advocate sr 85273.

C.M.A.No.3211 of 2010

KS (CO)
SP (21/03/2019)



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