

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3383 of 2011

Prabaharan

... Appellant/Petitioner

..Vs..

1.Marappan

2.S.Kavinkumar

(Notice for respondents 1 and 2 may be
dispensed with since they were
set ex-parte before the Tribunal)

3.Bajaj Alliance General Insurance Co Ltd.,
Peoples Park, 3rd floor, Govt Arts College Road,
Coimbatore-641 018. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 to set aside the order in
M.C.O.P.No.213 of 2009 on the file of the Motor Accident Claims
Tribunal (Sub Court), Bhavani dated 10.03.2011.

For Appellants : Mr.C.Kulanthaivel

For Respondents : Mr.R.Srevidhya for R-3
Respondents 1 and 2 - set ex-parte
before the Tribunal

JUDGMENT

The appellant is the claimant in M.C.O.P.No.213 of 2009
on the file of the Motor Accident Claims Tribunal (Sub Court),
Bhavani. He has questioned the quantum of compensation awarded
by the Tribunal, vide its order dated 10.03.2011.

2. On 18.03.2009 at about 3.p.m., the appellant/claimant was riding a motor-cycle bearing Registration No.TN-36-7479 on Coimbatore-Perundurai Road. When he was nearing Pallagoundenpalayam Nadupatti, a speeding mini bus bearing Regn.No.38-AB-6737 belonging to the first respondent, hit the appellant/claimant, as a result of which, he sustained grievous injury.

3. The Tribunal, after analyzing the entire evidence on record, awarded a compensation to the claimant to the tune of Rs.66,000/- together with interest at the rate of 7.5 per annum from the date of petition till the date of deposit. Aggrieved over the quantum of compensation, the claimant has filed the present appeal.

4. Mr.C.Kulanthaivel, learned counsel appearing for the appellant-claimant would contend that when the Doctor (PW2) has assessed the partial permanent disability as 45%, the Tribunal is not justified in reducing the partial permanent disability as 15% and that too without assigning any reason.

5. On a perusal of the partial permanent disability certificate Ex.P-11, it shows that the appellant/claimant sustained a fracture on the right tibia and fibula bones and there is also malunion of the bones. P.W.2 Doctor, while issuing Ex.P-11, has assessed the partial permanent disability as 45%. Without considering Ex.P-11 and the evidence of the doctor (P.W.2), the Tribunal has reduced the partial permanent disability at 15% without assigning any reasons. Therefore, the partial permanent disability suffered by the appellant/claimant is fixed at 45%.

6. Since the appellant/claimant was working as a Supervisor, the disability suffered by him would not result in total loss of his earning capacity. Therefore, the multiplier method need not be adopted as far as the present case is concerned.

7. In the facts and circumstances of the case, the loss of earning capacity is assessed at Rs.90,000/- (45 x 2000).

8. Apart from that, the appellant/claimant is entitled to a sum of Rs.10,000/-, Rs.5,000/- and Rs.10,000/- respectively under the heads of pain and suffering, transportation and extra-nourishment.

9. The appellant/claimant was admitted as an in-patient for 9 days in a hospital. According to the appellant/claimant, he was earning a sum of Rs.5,000/- p.m. Since no evidence was adduced to prove the income, a sum of Rs.4,500/- is taken as notional income of the appellant/claimant. Since the appellant/claimant has suffered fracture on the right tibia and fibula bones and there is also mal-union of the bones, he would have been bed-ridden atleast for three months, and therefore, the loss of income is calculated at Rs.4,500/- x 3 = Rs.13,500/-. Apart from the above amount, he is entitled to a sum of Rs.1,000/- towards loss of articles, Rs.2,000/- towards

medical expenses and Rs.15,000/- towards future medical expenses. Thus, the appellant/claimant is entitled to a total sum of Rs.1,46,500/- (Rupees one lakh forty six thousand and five hundred only), which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The enhanced award amount under various heads, is extracted hereunder:

Head	Amount awarded (in Rs.)
Loss of earning capacity (45 x 2000)	90,000
Pain and sufferings	10,000
Transportation	5,000
Extra-nourishment	10,000
Loss of income	13,500
Loss of articles	1,000
Medical expenses	2,000
Future medical expenses	15,000
Total	1,46,500

10. The third respondent-Insurance Company is directed to deposit the enhanced compensation amount, less the amount already deposited, together with interest at the rate of 7.5% within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount. The appellant/claimant is directed to pay the Court fee for the enhanced compensation.

11. With the above enhancement of the compensation amount, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge
(Motor Accident Claims Tribunal), Bhavani.

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.78694

+1cc to Mr.R.Sreevidha, Advocate SR.No.79658

C.M.A.No.3383 of 2011

EV (CO)
GMY (17/12/2018)



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