

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3732 of 2011

Chennai

... Appellant /claimant

Vs.

1. Duraisamy

2. K.C.Govindasamy
(Notice to R1 and R2 dispensed with
since they were set exparte before the tribunal)

3. National Insurance Company Limited,
Mettur Main Road, Bavani Town,
Erode District. ... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.29 of 2009 by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Bavani, Erode District on 26.10.2010.

For Appellant : Mr.C.Kulanthaivel

For 3rd Respondent : Mr.S.Arunkumar

Respondents 1 and 2 : Exparte

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.29 of 2009 on the file of the Subordinate Judge, Motor Vehicle Accident Claims Tribunal, Bavani, Erode District and he filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 20.09.2008.

2. The brief case of the claimant is as follows. On 20.09.2008, the claimant was riding his two wheeler TVS 50 bearing registration No. TN33-J-9022 along Erode-Thingaloor Road. At about 8.30 p.m., when the claimant was nearing Nallampatti, a speeding Eicher van bearing registration No TN-

58-6617 belonging to the 2nd respondent hit the two wheeler, as a result of which, he sustained injuries all over his body. According to him, he was an agricultural labourer earning a sum of Rs.4,500/- per month and that he could not do any work as before on account of the accident. He further contended that since the 2nd the respondent injured his vehicle with the 3rd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The first respondent is the driver of the vehicle bearing registration NO.TN58-6617. Both the first and second respondents remained absent before the tribunal and therefore, they were set exparte. The 3rd respondent, National Insurance Company Limited contested the claim petition by filing a counter.

4. After analysing the evidence on record, the learned Subordinate Judge, Motor Accident Claims Tribunal, Bavani, awarded a compensation of Rs.67,000/- together with interest at the rate of 7.5% per annum from the date of claim petition. Not satisfied with the quantum of compensation, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation amount.

5. Mr.C.Kulanthaivel, learned counsel appearing for the appellant contended that when Dr.Krishnasamy (PW2) has assessed the partial permanent disability as 32%, the tribunal has fixed the partial permanent disability at 15% and awarded only a sum of Rs.30,000/- towards partial permanent disability, without assigning any reason. He also contended that when the medical bills filed to the tune of Rs.7627/-, only a sum of Rs.5,000/- was awarded towards medical expenses and no amount was awarded towards attender's charges.

6. Per contra, Mr.S.Arunkumar, learned counsel appearing for the 3rd respondent National Insurance Company contended that the tribunal after considering various aspects had awarded a just compensation and therefore, it need not be disturbed at this juncture.

7. A perusal of a copy of wound certificate Ex.P5 shows that the appellant/claimant had sustained compound communitated fracture of both bones on his right leg. Dr.Krishnamurthy had assessed partial permanent disability as 32% and issued partial permanent disability certificate Ex.P11. However, the tribunal had fixed partial permanent disability as 15%, without assigning proper reasons. In fact, Dr.Krishnamurthy (PW2) had assigned

cogent reasons in his partial permanent disability certificate for arriving partial permanent disability as 32%. As far as the present case is concerned, there is no functional disability and hence applying multiplier method is not warranted. In the considered opinion of this court, awarding a sum of Rs.2,000/- per percentage would meet the ends of justice. Thus, Rs.64,000 (32 x 2000) is awarded towards partial permanent disability. Apart from this, the claimant is entitled to a sum of Rs.7,627/- towards medical expenses, since he has adduced acceptable evidence (Ex.P8 medical bills) in this regard. As far as the other heads are concerned, the tribunal has awarded Rs.20,000/-, Rs.2,000/-, Rs.8,000/- and Rs.2,000/- towards 'Pain and sufferings', 'Extra Nourishment', 'Loss of income', and 'Transportation charges' respectively. No amount was awarded towards 'Damage to clothes' and 'attender's charges' and for the same Rs.1,000/- each is awarded. The enhanced compensation amount awarded under various heads is extracted hereunder.

S1 No	Heads	Amount in Rs.
1	Partial permanent disability	64,000
2	Pain and sufferings	20,000
3	Medical Expenses	7,627
4	Damage to clothes	1,000
5	Extra nourishment	2,000
6	Loss of Income	8,000
7	Transportation charges	2,000
8	Attender's charges	1,000
	Total	1,05,627

The said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

8. In the result,

(i) The appeal is allowed in part. No costs.

(ii) The appellant/claimant is entitled to a compensation of Rs.1,05,627/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The 3rd respondent/Insurance company is directed to deposit the enhanced compensation of Rs.1,05,627/- with accrued interest, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 3rd respondent, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mst
To

- 1 . The Subordinate Judge,
Motor Accidents Claims Tribunal,
Bavani,
Erode District.
- 2 . The National Insurance Company Limited,
Mettur Main Road, Bavani Town,
Erode District.

+1 CC to Mr.C.Kulanthaivel, Advocate sr 89628.
+1 CC to Mr.S.Arunkumar, Advocate sr 89720.

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सत्यमेव जयते

SPD (CO)
SP (14/02/2019)

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