

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.651 of 2015

Durai @ Rajendran,
Rep. by his wife Manimegalai. ... Appellant

Vs

1.Minnalkodi
2.The Manager,
Royal Sundaram alliance Company Limited,
46, Whites Road,
Chennai - 14. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 30.7.2012 passed in MACTOP.No.23 of 2012 by the Motor Accidents Claims Tribunal, Tiruvarur.

For Appellant : Mr.S.Sounthar

For Second Respondent : Mr.M.B.Raghavan (for R2)

JUDGMENT

Being dissatisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.23 of 2012, dated 30.7.2012, the appellant-claimant has filed this appeal seeking enhance of Rs.1,00,000/-.

2. Stating that the injured Durai @ Rajendran was in unconscious, his wife had filed the claim petition claiming compensation of Rs.10.00 lakhs for the injuries sustained by her husband viz., Durai @ Rajendran in a road traffic accident occurred on 21.1.2009 alleged that while her husband was returning in Maruthi Omni van bearing registration No.TN-50 D 2473 owned by the first respondent insured with the second respondent from Tiruppur to Karur and when the van was nearing

Kasipalayam at 3.30 A.M., the driver of the van drove the same in a rash and negligent manner and the van was capsized. As a result, her husband sustained grievous injuries on his ear, nose, lip and also head and became unconscious. After the accident, her husband was admitted in Amaravathi Hospital, Karur where he had taken treatment till 28.2.2009 as inpatient. During the period of treatment, he underwent surgery on his head and thereafter, he had taken treatment as outpatient. Still her husband was in unconscious. Regarding the accident, a criminal case in Crime No.23 of 2009 was registered by Chinnatharapuram Police Station against the driver of the Omni van. At the time accident, the injured was aged 41 years and was earning Rs.8,000/- per month by doing loading work and also agricultural coolie work. Stating that the accident occurred due to rash and negligent driving of the driver of the Omni van, the wife of the injured filed claim petition.

3. The first respondent owner of the Omni van filed counter stating that at the time of accident, the van was insured with the second respondent and the driver of the van was having valid driving licence to drive the same. Therefore, if any compensation to be payable, the same was liable to pay by the second respondent insurance company.

4. The second respondent filed counter stating that the claimant has to prove that the accident occurred due to the rash and negligent driving of the driver of the first respondent van and also prove that at the time of accident, the van was insured with the second respondent. In fact, the owner of the van has not informed the accident to the second respondent and the driver of the van was not having valid driving licence at the time of accident. The second respondent also denied the age, occupation, monthly income of the injured. Anyhow, the compensation claimed by the claimant is excessive.

5. Before the Tribunal, the wife of injured was examined as P.W.1 and Dr.Swaminathan was examined as P.W.2. Exs.P1 to P50 were marked. No oral and documentary evidence was adduced on the side of the respondents.

6. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Omni van and that at the time of accident the van was duly insured with the second respondent insurance company and therefore, the second respondent insurance company was liable to pay the compensation. The Tribunal awarded compensation of Rs.2,05,700/- for the injuries sustained by the injured in the accident. Challenging the quantum, the appellant has filed the present appeal.

7. I heard Mr.S.Sounthar, learned counsel appearing for the appellant and Mr.M.B.Raghavan, learned counsel for the 2nd respondent and perused the entire materials available on record.

8. Assailing the quantum, the learned counsel for the appellant submitted that having regard to the nature and the extent of disability at 65%, the Tribunal ought to have adopted multiplier method. He would submit that the Tribunal erred in awarding lesser amount as compensation and seeks for enhancement.

9. Reiterating the findings of the Tribunal, the learned counsel for the second respondent submitted that the total compensation of Rs.2,05,700/- awarded by the Tribunal is just and reasonable and there is no need to enhance the same.

10. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant and secondly, none of those findings are under challenge. Only quantum of compensation is under challenge.

11. In the case on hand though the appellant urged that the Tribunal ought to have adopted multiplier method by taking the monthly income of the injured at Rs.4,500/-, on a perusal of the appeal memorandum, it is seen that the appellant sought enhancement of Rs.1,00,000/- and paid court fee for the same.

12. Since the injured was unconscious, his wife has filed the claim petition and examined herself as P.W.1. In her evidence, P.W.1 deposed that in the accident her husband sustained head injury apart from other injuries all over the body. Due to head injury, he went to unconscious. Though the respondents contended that injuries sustained by the injured were simple in nature, nothing has been produced to establish the same.

13. In her evidence, P.W.1 further deposed that on 22.1.2009, the injured was admitted in Amaravathy Hospital, Karur and he had taken treatment till 28.2.2009 as inpatient. During the period of treatment, the injured underwent surgery on his head. Due to head injury, he was unable to speak. Ex.P48 is the discharge summary.

14. P.W.2-Doctor examined the injured and assessed the disability at 65% and also issued Ex.P47-disability certificate. Taking note of injuries sustained by the injured in the accident, Rs.65,000/- awarded by the Tribunal towards disability by taking Rs.1,000/- per percentage is very low. Since accident was of the year 2009, it would be appropriate to take

Rs.2,000/- per percentage of disability and accordingly, this Court enhanced Rs.1,30,000/- towards disability in the place of Rs.65,000/- awarded by the Tribunal.

15. The Tribunal awarded Rs.78,500/- towards medical expenses. The claimant had produced Exs.P15 to P45-medical bills to show that he had incurred Rs.78,500/- towards medical bills. Considering the period of treatment undergone by the injured, Rs.78,500/- awarded by the Tribunal towards medical expenses is maintained.

16. The Tribunal has not awarded any amount towards future medical expenses. As stated supra, in the accident, the injured sustained grievous injuries on his head and in fact, he had underwent surgery also. According to the appellant, the injured is still taking treatment as outpatient. Considering the nature of injuries sustained by the injured, it would be appropriate to award a sum of Rs.35,000/- towards future medical expenses.

17. The Tribunal awarded Rs.7,000/- towards loss of earning for two months. Since the injured had taken treatment as inpatient till 28.2.2009, Rs.7,000/- awarded by the Tribunal for loss of earning for two months is reasonable and the same is maintained.

18. The Tribunal awarded Rs.50,000/- towards pain and suffering. Considering the nature of injuries sustained by the injured in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would suffered mental and physical shock at the time of accident. The pains and sufferings are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Considering the nature of injuries sustained, Rs.50,000/- awarded by the Tribunal for pain and suffering is reasonable and the same is maintained.

19. The Tribunal awarded Rs.1,000/- for transport charges; Rs.2,000/- for extra-nourishment; Rs.200/- for damages to cloths and articles; Rs.2,000/- for attender charges. Since the amount awarded under the aforesaid heads are reasonable, the same are confirmed.

20. For the foregoing discussion, the compensation of Rs.2,05,700/- awarded by the Tribunal is enhanced to Rs.3,05,700/- as under:

Heads	Rs.
Disability	1,30,000.00
Loss of earning	7,000.00
Pain and suffering	50,000.00
Transport charges	1,000.00
Extra-nourishment	2,000.00
Damages to clothes	200.00
Attender charges	2,000.00
Medical expenses	78,500.00
Future medical expenses	35,000.00
Total	3,05,700.00

21. In the result, the appeal is allowed with proportionate costs. The compensation of Rs.2,05,700/- awarded by the Tribunal is enhanced to Rs.3,05,700/-. The enhanced compensation of Rs.1,00,000/- is payable with interest at the rate of 7.5% per annum from the date of this judgment till the date of deposit. The second respondent insurance company is directed to deposit the enhanced compensation with interest within a period of eight weeks from the date of receipt of a copy of this judgment.

It is stated that the second respondent insurance company has already deposited the amount awarded by the Tribunal along with interest. The appellant is permitted to withdraw the deposited amount along with accrued interest lying in the credit of claim petition before the Tribunal on filing proper application immediately. On such deposit of the enhanced compensation awarded by this Court by the second respondent, the appellant is also permitted to withdraw the same.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal, Tiruvarur.

Copy To :
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate SR.No.68246

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SVI(CO)
GMY(18/02/2019)