

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.365 of 2013

Balasubramani @ Balan

..Appellant/Claimant

..Vs..

1.Mallika
(Exparte in the Trial Court)

2.M/s.Royal Sundaram Alliance Insurance Company Limited,
Corporate Office, Sundaram Towers,
45/246 Whites Road,
Chennai 600 014. ..Respondents/ respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 06.10.2012 in MCOP No.1084 of 2009 on the file of the Motor Accidents Claims Tribunal-Sub Judge, Dharmapuri.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.S.Manoharan - R2

JUDGMENT

The Civil Miscellaneous Petition has been preferred against the Judgment and decree dated 06.10.2012 in MCOP No.1084 of 2009 on the file of the Motor Accidents Claims Tribunal-Sub Judge, Dharmapuri.

The brief facts leading to the filing of the instant revision:

2. On 06.11.2000 at about 7 p.m when the Appellant was riding his Bajaj Platina Bike bearing registration No.TN 29 AC 8565 from Dharmapuri towards Periyampatti in the N.H.7 road, a Tipper lorry bearing registration No.TN. 29 AA 1271 came in the opposite direction and dashed against the Appellant's vehicle, as a result, the Appellant sustained severe injuries including the fracture injuries. The Appellant was admitted in the Government Hospital,

Dharmapuri and he was given treatment as inpatient and two major surgeries were also done to him and even after discharge from the hospital, he was taking regular treatment in the Ganga hospital. The Appellant sustained disability and he claimed a sum of Rs. 10,00,000/- as compensation.

3. The second respondent/Insurance company in the counter statement denied the accident and the rash and negligent driving on the part of the driver of the Tipper lorry. It is also averred in the counter statement that the driver of the said vehicle was not possessing driving licence and no valid document filed by the Appellant. The said vehicle is insured with the second respondent/Insurance Company and the second respondent disowned the liability and placed the burden on the owner of the vehicle, since there is a violation of statutory provisions.

4. It is further stated that the Appellant did not take any precaution for his safety while riding his Motor Vehicle and he invited the accident. But the other aspects regarding the age, income and occupation of the Appellant was denied by this second respondent as false and the claim has been made without any documents. Hence the second respondent/ insurance company denied their liability and the claim made by the claimant.

5. The Tribunal after analysing the evidence and documents, given the findings that it is the driver of the Tipper Lorry who had driven the said vehicle in a rash and negligent manner and caused the accident and awarded a sum of Rs.4,31,822/- as compensation and directed the respondents to pay the said compensation to the claimant jointly and severally. Aggrieved by the said award, the claimant/appellant herein has preferred this appeal for enhancement.

6. The appellant has stated that the income of the claimant was not considered properly by the Tribunal. The sum awarded by the tribunal at Rs.2000/- per percentage of disability is not proper, when the claimant has sustained functional disability due to the fracture of Beemar bone (fracture with in tercondylar extention, laceration above right eye brow, volar barton fracture with scaphoid fracture right), which very much affects the income of the claimant in his entire life, who is a driver by profession. The tribunal without considering these aspects, has awarded

a very meagre amount as compensation. It is the grievance of the appellant that the tribunal has not followed the provision in the schedule II by applying the multiplier method. The sum awarded under various heads are also very less inspite of sufficient proof placed before the tribunal.

7. Heard Mr.R.Selvakumar, learned Counsel for the appellant. Mr.S.Manoharan, learned Counsel for the respondent and perused the documents available on record.

8. It is argued by the learned counsel for the appellant that the claimant/appellant herein is a lorry owner cum driver and also an agriculturist and earning Rs.15,000/- per month at the time of the accident. The tribunal has not considered these aspects while determining the compensation. It is the grievance of the appellant that due to the Injury the appellant had sustained 55% disability and P.W.2 was also spoken before the tribunal regarding the nature of injury and the disability sustained by the appellant, which totally prevents him from continuing his occupation as driver. The further argument advanced by the appellant is that the claimant is only 30 years and he has sustained 55% of disability, but the Tribunal has awarded a sum of Rs. 1,10,000/- by taking Rs.2000/- for per percentage of disability, which is not at all the reasonable.

9. The second respondent contended that the claimant/appellant has not placed any documents before the tribunal to prove his occupation as the driver and also any evidence or document to show that he is totally deprived from continuing his avocation as he was doing before the accident.

10. On perusal of the records it is observed that the appellant had sustained injuries including fracture in the right Beemer bone and also in the radius bone of the left bone. Exhibit P5 is the discharge summary and Exhibit P2 is the accident register which reveal the fact that the Appellant under gone two surgeries, which was very much proved by way of filing Exhibit P5. The other documents and the evidence place by PW.2 also confirms the nature of the injury and the surgery done to the claimants and the proof of treatment prove the facts the serious and great in nature of the injury which resulted in 55% disability. It is also observed that the tribunal has awarded a sum of Rs. 10,000/- has to be properly the awarded by adopting the multiplier method. It is argued by the respondent that to prove that the claimant is unable to continue his work, neither the documents nor evidence were placed was placed

before the tribunal, hence the sum awarded by the tribunal for disability is very much reasonable and proper one. From the perusal of the documents regarding the nature of the injury and the treatment undergone by the claimant/appellant and the evidence of P.W.2, the age and disability of the disability are all very much proved by the Appellant. Even in the absence of any other documents, by taking into consideration the disability and the injuries sustained by the claimant, it can be very well presume that he is unable to continue his occupation as driver. Hence this Court is inclined to enhance the sum awarded under the head disability. Accordingly, this Court fix a sum of Rs.3000/- per percentage and calculates the sum for disability as Rs.1,65,000/- (3000 x 55). Since the sum awarded under other heads viz., Extra nourishment, attendant charges, pain and suffering, transport expenses, medical expenses, physiotherapy expenses and loss of income for treatment period are found proper and reasonable, this Court does not want to interfere with the sum awarded under those heads.

The sum awarded by this Court is modified as below;

Sl. No	Head	Sum awarded by the Tribunal	Sum modified by this Court
1	Disability	Rs. 1,10,000/- (2000 x 55)	Rs. 1,65,000 (3000 x 55)
2	Extra Nourishment	Rs. 5000/-	Rs. 5000/-
3.	Attendant Chargers	Rs. 5,000/-	Rs. 5,000/-
4.	Pain and suffering	Rs. 5,000/-	Rs. 5,000/-
5.	Transport Expenses	Rs. 37,700/-	Rs. 37,700/-
6.	Medical Expenses	Rs. 2,04,072/-	Rs. 2,04,072/-
7.	Physiotherapy Expenses	Rs. 55,050/-	Rs. 55,050/-
8	Loss of income for transport period	Rs. 10,000/-	Rs. 10,000/-
	Total	Rs. 4,31,822/-	Rs. 4,86,822

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

12. The 2nd respondent /Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before 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 amount to the claimant's bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry the same as ordered by the tribunal.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To
The Sub Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

Copy to:
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.R.Selvakumar , Advocate SR.No. 89379

A.SK(20/09/2019)

C.M.A.No.365 of 2013

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