

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.752 of 2016

Marimuthu ... Appellant/Claimant

Vs

1.D.Annadurai

2.The New India Assurance Co. Ltd.,

12, New Hospital Road,

Gobi-638 452,

Erode District.

... Respondent/ Respondent

(Notice to R1 dispensed with for
the set exparte befor the Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 05.2.2016 passed in M.C.O.P.No.265 of 2014 on the file of the Motor Accident Claims Tribunal (Sub-Court), Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For Respondents : Mrs.R.Srividhya (for R2)

R1 - Exparte

सत्यमेव जयते
O R D E R

Being dissatisfied with the quantum of compensation of Rs.2,23,192/- awarded by the Tribunal in M.C.O.P.No.265 of 2014 dated 05.2.2016 on the file of the Motor Accident Claims Tribunal, Tiruchengode, the appellant has preferred this appeal.

2. Brief facts are that on 18.6.2013 at about 10.00 A.M., the appellant was travelling in a motorcycle bearing registration No.TN-34 K 8185 as pillion rider on Tiruchengode-Salem Main Road and when the motorcycle was nearing Andrapatti bus stop, a car bearing registration No.TN-33 AL 8991 driven by its driver in a rash and

negligent manner dashed against the motorcycle. Due to the impact, the appellant sustained fracture in his right leg, right thigh and sustained injury on his head and also all over the body. Immediately after the accident, the appellant was admitted in Government Hospital, Tiruchengode where from he was taken to Tirukumaran Hospital, Tiruchengode. Regarding the accident, a criminal case in Crime No.127 of 2013 under Section 279 and 338 IPC was registered. At the time of accident, the appellant was aged 65 years and was earning Rs.15,000/- per month by doing agriculture coolie work. Stating that the accident occurred due to the rash and negligent driving of the driver of the car, the appellant has filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Resisting the claim petition, the second respondent insurance company has filed counter stating that on 18.6.2013 while the appellant was riding his two wheeler bearing registration No.TN-34 K 8185 on Tiruchengode to Salem Main Road, near Andrapatti bus stop, suddenly turned his vehicle to his right side to arrive the wine shop situated in the opposite side of the road, without mindful of the vehicular traffics, that too, a vehicle bearing registration No.TN-33 AL 8991 to his close proximity from behind, hit the vehicle and invited the accident. Therefore, the appellant is sole tortfeasor. The police who registered the case has filed a final report as mistake of fact. Therefore, the second respondent is not liable to pay compensation to the appellant.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and two Doctors were examined as P.W.2 and P.W.3 and marked Exs.P1 to P11. On the side of the second respondent, R.W.1 was examined and Exs.R1 and R2 were marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was happened due to the rash and negligent act of the driver of the car bearing registration No.TN-33 AL 8991 and since the second respondent is the insurer of the vehicle, they are liable to pay the compensation to the appellant. The Tribunal awarded total compensation of Rs.2,23,192/- against Rs.15.00 lakhs. Being dissatisfied with the quantum of compensation, the appellant has filed the present appeal.

6. I heard Mr.C.Paraneedharan, learned counsel for the appellant and Ms.R.Srividhya, learned counsel for the 2nd respondent and perused the records.

7. Assailing the award, the learned counsel for the appellant submitted that the total compensation awarded by the Tribunal is very meagre, as in the accident the appellant had sustained fracture in his right leg and right thigh. Due to injuries, the appellant was unable to sit cross legged on the floor and was also unable to climb up and down of stair case steps. The learned counsel would submit that the Tribunal instead of applying multiplier method has taken Rs.2,000/- per disability and awarded the compensation. The learned counsel further submitted that the Tribunal failed to award compensation towards loss of future earning capacity and the compensation awarded under other heads are also very low and seeks enhancement.

8. Reiterating the findings of the Tribunal, the learned counsel for the second respondent insurance company submitted that the total compensation awarded by the Tribunal is just compensation and same need not be enhanced.

9. 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. As against the award passed, no appeal has been preferred by the second respondent insurance company. The only issue to be decided in this appeal is whether the quantum of compensation awarded by the Tribunal needs enhancement.

10. In his claim petition, the petitioner stated that he was aged 65 years and was earning Rs.15,000/- per month by doing agricultural coolie work. The Tribunal has taken the monthly income of the appellant at Rs.4,500/-. Taking note of the fact that now a days, the agricultural coolies are getting minimum Rs.300/- per day and taking into consideration the present day cost of living, it would be appropriate to take the notional monthly income at Rs.8,000/-.

11. In the accident, the appellant had sustained two fractures and also multiple grievous injuries all over the body. The appellant was taken nearly three months bed rest. Sustaining fractures and multiple grievous injuries by the appellant in the accident have not been denied by the second respondent insurance company. Therefore, as rightly observed by the Tribunal, the appellant should have taken bed rest for at least 3 months. Hence, compensation of Rs.13,500/- awarded by the Tribunal towards loss of earning is enhanced to Rs.24,000/-.

12. The Tribunal awarded Rs.3,000/- towards transport to hospital. In the case on hand, immediately after the accident, the appellant was admitted in the Government Hospital, Tiruchengode and thereafter, he was shifted to Thirukumaran Hospital, Tiruchengode for further treatment. This Court feels that Rs.3,000/- towards transport to hospital awarded by the Tribunal is very low and the same is enhanced to Rs.6,000/-.

13. The Tribunal awarded Rs.5,000/- towards extra-nourishment. On a perusal of Ex.P6-discharge summary, it is seen that the appellant had taken treatment for nearly one month. Taking into consideration of the period of treatment undergone by the appellant, Rs.5,000/- awarded by the Tribunal towards extra-nourishment is enhanced to Rs.10,000/-.

14. The Tribunal awarded Rs.1,21,692/- towards medical expenses against Rs.5,90,000/- claimed by the appellant. The appellant had produced Ex.P8-series medical bills. On a perusal of the same, it is seen that the appellant had incurred Rs.1,21,692/- towards medical expenses. Though the appellant contended that under the head medical expenses, the Tribunal has awarded lesser amount, no new medical bills have been produced. In such view of the matter, a sum of Rs.1,21,692/- awarded by the Tribunal towards medical expenses is maintained.

15. The Tribunal awarded Rs.10,000/- for pain and suffering. Considering the nature of injuries sustained in the accident and the period of treatment undergone by the appellant, a sum of Rs.10,000/- awarded by the Tribunal is enhanced to Rs.35,000/- towards pain and suffering.

16. The Tribunal awarded Rs.70,000/- towards continuing/permanent disability by taking the disability at 25% for right thigh with hip and knee and 10% for right leg with knee. P.W.2-Doctor issued Ex.P9-disability certificate assessing the disability at 53%. However, the Tribunal has taken the total disability at 35% holding that P.W.2-Doctor has not treated the appellant. The aforesaid finding of the Tribunal is not acceptable for the reason that in his evidence, P.W.2 deposed that only after examining the appellant and on seeing the X-ray, he assessed the disability at 53% and had issued the disability certificate. When such being the evidence of PW2-doctor, the Tribunal erred in fixing the disability at 35%. As regards disability 5 to 10% would vary from Doctor to Doctor. Considering the nature of injuries sustained by the appellant in the accident, this Court is inclined to take the disability at 45%.

17. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, the Hon'ble Apex Court has considered Rs.3,000/- per percentage of disability. Following the decision of the Apex Court in National Insurance Company Ltd. v. G.Ramesh, supra, this Court has taken Rs.3,000/- per percentage of disability. Taking the disability at 45%, an amount of Rs.70,000/- awarded by the Tribunal is enhanced to Rs.1,35,000/- towards loss of continuing/permanent disability.

18. Though the petitioner has claimed Rs.50,000/- for future medical expenses, the Tribunal has not awarded any amount under the aforesaid head. Considering the nature of injuries sustained by the appellant in the accident, it would be appropriate to award a sum of Rs.25,000/- towards future medical expenses.

19. The appellant has claimed a sum of Rs.50,000/- towards attender charges. Finding that no proof was filed, the Tribunal declined to award any amount under the head attender charges. In its award, the Tribunal observed that the appellant had taken treatment as inpatient from 18.6.2013 to 17.7.2013. When the appellant had taken treatment as inpatient from 18.6.2013 to 17.7.2013, during the said period, definitely, the appellant would have been taken care of by the attender. Therefore, it would be appropriate to award a sum of Rs.10,000/- towards attender charges.

20. The Tribunal has not awarded any amount towards loss of amenities. Loss of amenities covers the deprivation of ordinary experiences and enjoyment of life. In the case on hand, the appellant has stated that due to the accident, he could not able to do any usual activities. Considering the nature of injuries sustained in the accident, a sum of Rs.10,000/- is awarded towards loss of amenities. Thus, the total compensation of Rs.2,23,192/- awarded by the Tribunal is enhanced to Rs.3,76,692/-, rounded off to Rs.3,76,700/- as under:

Heads	Rs.
Continuing/Permanent disability	1,35,000.00
Loss of earning	24,000.00
Transport charges	6,000.00
Extra-nourishment	10,000.00
Medical expenses	1,21,692.00

Heads	Rs.
Pain and suffering	35,000.00
Attender charges	10,000.00
Loss of amenities	10,000.00
Future medical expenses	25,000.00
Total	3,76,692.00
Rounded off	3,76,700.00

21. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.3,76,700/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellant is at liberty to withdraw the said amount with accrued interest by making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Sub-Court, Tiruchengode.

2. The section officer,
VR Section,
High court
Madras

+4ccs to Mr. C.Paraneedharan, Advocate SR.No. 69403

+1cc to Mrs.R.Srividhya , Advocate SR.No. 70251

C.M.A.No.752 of 2016

ASK(07/12/2018)