

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 930 of 2017

Murugan

..Appellant/Petitioner

Vs.

1. D.Anuradha
(set ex-parte before the claims Tribunal)
2. Reliance General Insurance Co. Ltd.,
Reliance House,
Haddows Road, T.P.Cell,
Nungambakkam, Chennai 34 ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 16.09.2016 made in MACTOP No.2803 of 2011 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For Respondents : R1 set exparte
before Tribunal
Mr.S.Arun Kumar for R2

JUDGMENT

(Judgement of this Court made by Krishnan Ramasamy.J.)

The appeal has been preferred by the claimant, against the award of Rs.1,49,400/- as compensation for the injuries sustained by the appellant in the accident, which occurred on 08.02.2011.

2. Heard Mr. F.Terry Chella Raja the learned counsel appearing for the appellant and Mr.S.Arun Kumar the learned counsel appearing for the second respondent.

3. On 08.02.2011 at about 20:00 hrs while the appellant herein was standing near Kadapakkam bus stand at ECR road, at that time a TATA ACE bearing Registration No.TN-19-C-2677 coming from Pondicherry to Chennai direction which was driven by its driver with a very dangerous speed in a rash and negligent

manner dashed against the appellant, thereby the appellant had sustained grievous injuries. According to the appellant, the accident had occurred only due to the rash and negligent driving of the driver of the TATA ACE bearing Registration No.TN-19-C-2677. The Tribunal confirmed that the accident occurred due to the negligence on the part of the driver of TATA ACE bearing Registration No.TN-19-C-2677. The first respondent is the owner and he was set exparte before the claims Tribunal and the second respondent is insurance company.

4. The only question to be decided is with regard to the quantum of compensation. The Tribunal determined the disability as 30% based on the evidence of PW2, PW3 and documents Ex.P.7, P.14 & P.15 and considering the following injuries sustained by the claimant:

- " (i) facial lacerations
- (ii) fracture of right zygoma
- (iii) fracture of right ribs 3 to 8
- (iv) fracture of left ribs 3 and 6
- (v) fracture of right fibula &
- (vi) fracture of lateral wall of right orbit & right zygomatic arch

The Doctors assessed the disability as 70% and 40% but to substantiate that PW2 failed to file any worksheet and guidelines. Further Ex.P7 Blind Certificate produced by the petitioner was not proved by him by examining the concerned Medical Officer who issued the certificate, regarding the permanent disability. PW3 - Dr.R.Rajappan did not give a detailed report regarding the permanent disability. Therefore the Tribunal decided the disability as 30% by considering the age of the injured appellant, nature of injuries sustained by him. We also agree with the views of the Tribunal.

5. In respect of quantum of award, the discussion is as below:-

Disability:-

While determining the disability the Tribunal had taken into account the judgment of this Hon'ble Court reported in 2013(2) TNMAC 583, National Insurance Co.Ltd., Vs G.Ramesh, it is determined to award a sum of Rs.3,000/- for 1% disability and accordingly the Tribunal awarded a sum of Rs.90,000/- for injuries sustained by the injurer. We confirm the same.

Pain and Suffering:

The Tribunal awarded a sum of Rs.25,000/- towards pain and suffering, however we feel that it should be increased to higher amount by considering the injuries of the injured. Therefore, we

enhance the compensation for Pain and Suffering to Rs.50,000/-.

Extra Nourishment:

The Tribunal awarded a sum of Rs.3,000/-, however we feel that the amount awarded by the Tribunal is very low, therefore we enhance it to Rs.25,000/-

Transport to Hospital:

The Tribunal awarded a sum of Rs.3,000/- towards transport to hospital, however we feel that the amount awarded by the Tribunal is very low and therefore we enhance it to Rs.10,000/-.

Damages to Clothes:

The Tribunal awarded a sum of Rs.500/- towards damages to clothes and the same is confirmed.

Attender Charges:

The Tribunal awarded a sum of Rs.2,400/- towards attender charges, however considering the nature of injuries we enhance it to Rs.10,000/-

Medical Expenses:

The Tribunal awarded a sum of Rs.5,000/- towards medical expenses and the same is confirmed.

Future Medical Expenses:

The Tribunal awarded a sum of Rs.2,500/- towards future medical expenses and the same is confirmed.

Loss of Income:

The Tribunal awarded a sum of Rs.6,500/- towards loss of income. However, the Tribunal did not apply the principles laid down by the Hon'ble Supreme Court of India in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC and United India Insurance Company Limited Vs Veluchamy and another reported in 2005 ACJ 1483 (Division Bench Madras) in fixing the multiplier and also not followed the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, in computation of future earning. However, considering the various aspects and nature of injuries and the nature of work of the injured we fix the income of the injured along with future prospects as a sum of Rs.8,000/-. While determining the loss of income of the injured person, we have taken into consideration the nature of injuries occurred to the injured and the disabilities assessed by the Doctors. Therefore we decide to apply the multiplier as '16' since the age of the petitioner is 33 years old. Further for the purpose of calculation of loss of income we take the disability as 25%, therefore we enhance the compensation for loss of income to Rs.3,84,000/- (Rs.8,000/-x25/100x12x16).

Loss of Amenities:

The Tribunal awarded a sum of Rs.5,000/- towards loss of amenities and the same is confirmed.

6. Hence the total compensation awarded in this case is Rs.5,82,000/-

Head	Amount
Disability	Rs.90,000/-
Pain and suffering	Rs.50,000/-
Extra nourishment	Rs.25,000/-
Transport to hospital	Rs.10,000/-
Damages to clothes	Rs.500/-
Attender charges	Rs.10,000/-
Medical expenses	Rs.5,000/-
Future medical expenses	Rs.2,500/-
Loss of income	Rs.3,84,000/-
Loss of amenities	Rs.5,000/-
Total	Rs.5,82,000/-

7. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The appellant is directed to pay the requisite court fee if any, within a period of two weeks from the date of receipt of a copy of this order.

8. The second respondent is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of one week thereon.

9. Accordingly, the appeal is partly allowed, enhancing award of the Tribunal from 1,49,400/- to Rs.5,82,000/- along with interest. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

To
The IV Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai

+1 cc to MR.S.ARUNKUMAR, Advocate SR.No.35948
+1 cc to MR.V.VELU, Advocate SR.No.35933

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KK(CO)
SMI/14.08.2018



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