

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.12.2017
Pronounced on	27.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1634 of 2008

Alexander ... Appellant/Petitioner

Vs.

1.C.Mugilan
2.Royal Sundaram Alliance
Insurance Company Limited,
Chennai. ... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and decree made in M.A.C.T.O.P. No.490 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee dated 14.10.2005.

For Appellant : Mr.J.Mahalingam

For Respondents : No Appearance for R1
Mr. S.Manohar for R2

JUDGEMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant against the Judgment and decree dated 14.10.2005 made in MCOP. No.490 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Poonamallee challenging the quantum of compensation awarded.

2.The brief facts of the Claim Application are as follows:

The appellant herein is the claimant, aged about 28 years, employed as Van Driver and thereby earning Rs.5,000/- per month.

(ii) On 06.10.2003 at about 10.30 pm, when the petitioner was riding Mahindra Van, bearing Registration No.TN-10-B-9320 from G.S.T. Road, Irumbuliyur towards Chennai, in south to north direction, a lorry bearing Registration No.TN-05-J-2596, driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against Mahindra Van driven by the claimant and caused grievous injuries to him.

(iii) The claimant moved a claim petition before the Motor Accidents Claims Tribunal (Subordinate Judge), Poonamallee claiming a compensation of a sum of Rs.4,00,000/- against the owner and insurer of the lorry, who are the respondents therein.

(iv) On the side of the claimant, he examined himself as PW1, Dr.Saichandran as PW2 and Dr.Anandhakrishnan as PW3 and marked documents Ex.P.1 to Ex.P.12. On the side of the respondents, neither a witness was examined, nor a document was marked.

(v) The Tribunal after analysing the oral and documentary evidence placed before it, awarded a sum of Rs.1,45,000/- (Rupees One Lakh Forty Five Thousand only) as total compensation along with interest at 7.5% per annum from the date of petition, till the date of realisation along with proportionate costs.

(vi) The break up details of the award passed by the Tribunal under various heads are as under:-

Pain and Sufferings	-	Rs. 25,000/-
Disability	-	Rs. 30,000/-
Hospital Expenses	-	Rs. 17,938/-
Doctor Fees	-	Rs. 35,000/-
Medicine Expenses	-	Rs. 12,462/-
Transport	-	Rs. 1,400/-
Extra nourishment	-	Rs. 200/-
Loss of Earning	-	Rs. 23,000/-
Total	-	Rs. 1,45,000/-

(vii) Aggrieved against the quantum of compensation awarded, the claimant as appellant, has preferred the present appeal before this Court stating that the amount awarded by the Tribunal is on lower side.

3. In the appeal, he would contend that the Tribunal has not considered the nature of injury sustained by the appellant. Disability has been assessed and certified by Doctor at 40% and the same was also marked as Ex.P10 has not been considered by the Tribunal. For disability, the Tribunal has awarded a meagre amount of Rs.30,000/- instead of Rs.2,00,000/- as claimed by the claimant. For loss of earning power, the Tribunal ought to have adopted appropriate multiplier taking into account his salary as Rs.5,000/-, a sum of Rs.6,00,000/-, but it has awarded only Rs.23,000/- under such head which is very meagre. For pain and suffering, the Tribunal awarded for a sum of Rs.25,000/- instead of Rs.1,00,000/- as claimed by the claimant, which is also inadequate.

4. Similarly, under the head of Extra nourishment, the tribunal has awarded only a sum of Rs.200/- instead of Rs.25,000/- and for Transport Expenses it awarded a sum of Rs.1,400/- instead of Rs.20,000/-. Insofar as the frustration, mental stress, hardship and discomfort, no amount has been awarded. Further, for loss of amenities, damages and for mental agony, the Tribunal has not awarded any amount. Hence, the appellant/claimant has preferred this appeal for enhancement of the award amount.

5. Heard learned counsel appearing for either side and perused the materials and documents available on record.

6. On perusal of records, it is seen that Exs. P3 and P4 are the tokens given by the Puthur Clinic for 10 sittings towards the treatment underwent by the claimant/appellant. In respect medical expenses incurred by him, the claimant produced medical bills amounting to a sum of Rs.2,882/-, which was marked as Ex.P9. Ex.P5-discharge summary reveals that the claimant was admitted in hospital for treatment on 14.12.2003 and discharged on 14.01.2004. He has also filed surgery report which shows that malunited MID shaft right femur and he was also given treatment for bringing the bones to normal level and a K Nail was fixed for him. Exs.P6 and P8 are also medical bills for a total sum of Rs.30,401/-. Ex.P12 is the receipt given by the Doctor. Ex.P10 is also the discomfort certificate issued by the Doctor who examined the claimant after two years of the accident.

7. P.W2 has deposed before the Tribunal that the injuries sustained by the claimant is on his right leg and because of that there was mal union of bones and the same was set right at the first instance by a surgery by affixing K.Nail and the length of the right leg has been reduced to 2 c.m., as a result of which, the claimant is limping while walking and find it very difficult even to do his day to day works. The Doctor has assessed the disability at 40%.

8. Considering the above facts, the award passed by the Tribunal is modified and the enhanced compensation is awarded as shown hereunder:-

Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
Pain and Sufferings	Rs.25,000/-	Rs.50,000/-
Disability	Rs.30,000/-	Rs.35,000/-
Hospital Expenses	Rs.17,938/-	Rs.17,938/-
Doctor Fees	Rs.35,000/-	Rs.35,000/-

Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
Medicine Expenses	Rs.12,462/-	Rs.12,462/-
Transport	Rs.1,400/-	Rs.1,400/-
Extra Nourishment	Rs.200/-	Rs.200/-
Loss of Earning	Rs.23,000/-	Rs.25,000/-
Total	Rs.1,45,000/-	Rs.1,77,000/-

Thus, there shall be an overall increase of Rs.32,000/- over and above the total amount of compensation awarded by the claims Tribunal.

9. In the result, the Civil Miscellaneous Appeal is partly-allowed, by enhancing the total amount of compensation from Rs.1,45,000/- to Rs.1,77,000/-, which is payable with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. No costs.

10. The second respondent/Insurance Company is directed to deposit the enhanced amount of compensation, as awarded by the Tribunal, along with interest at the rate 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant through RTGS within a period of two weeks thereafter. The appellant/claimant shall pay the requisite court fee on the enhanced amount of compensation before receipt of copy of this Judgement.

Sd/-

Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

rkp

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To

1. The Motor Accidents Claims Tribunal
Fast Track Court No.IV,
Poonamallee.

2. The Section Officer,
VR Section,
High Court, Madras.(2 copies)

+2cc to Mr.J.MAHALINGAM, Advocate, S.R.No.41145

+1cc to Mr.S.MANO HAR, Advocate, S.R.No.41217

C.M.A.No.1634 of 2008

NMI (CO)
TR(24/07/2018)



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