

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017
PRONOUNCED ON : 23.04.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.2262 of 2007

K.Suresh .. Appellant/Petitioner

Versus

1. Mr.K.Venkatasubramaniam

2. The Branch Manager,
United India Insurance Co.Ltd.,
Trichy.

... Respondents/ Respondents

Prayer:Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.147/2006 dated 16.02.2007 on the file of the Chief Judicial Magistrate, Nagapattinam.

For Appellant : Mr.P.R.Balasubramanian

For Respondents: Mr.T.Ravi Chandran for R2

JUDGMENT

The claimant is the appellant. The claimant is aggrieved by the Judgment and Decree dated 16.02.2007 passed in M.C.O.P. No. 147 of 2006 on the file of the Chief Judicial Magistrate, Nagapattinam awarding a sum of Rs.5,50,000/- as compensation as against the claim of Rs.10,00,000/- made for the injuries sustained by him in the accident that took place on 07.06.2001.

2. According to the claimant, on 07.06.2001 at about 02.15 p.m. when he was riding in TVS Motor Cycle bearing Registration No. TN- 51-A-4168 along with one of his relatives from Karaikal to Peralam Main Road, near SPIC company Sellur Village, the car bearing Registration No. TN G 6174, which was driven by the first respondent / Driver of the car, came in the opposite direction in a rash and negligent manner hit against them. Due

to the accident, both the claimant and his relative one Arumugam sustained multiple injuries including fracture. Immediately they were taken to Community Health Center at Thirunallur, where, the appellant was given first aid treatment and then he was admitted and treated as inpatient from 07.06.2001 to 18.06.2001 at Government General Hospital in Karaikal. Inspite of proper treatment given to the claimant, he could not regain his original health. Further, he took special treatment in the AKN Nursing Home at Chennai for several months for which he incurred medical expenses as per Exs.P5, P7 to P11 and inspite of continuous treatment he is suffering from disability. According to the claimant, it is only the first respondent, who has driven the Car in a rash and negligent manner and caused the accident. At the time of accident, the claimant was aged 26 years, a Taxi Driver, who possessed valid driving licence to drive Heavy vehicles and earning Rs.6,000/- per month. Therefore, for the injuries sustained in the accident, he claimed a sum of Rs.10,00,000/- as compensation.

3. On perusal of the claim petition, respondent's counter statement and also the documents and evidence placed before the Tribunal, it has awarded a sum of Rs.5,50,000/- with interest at the rate of 7.5% on the following breakup details :-

Loss of Income	:	Rs.2,16,000/-
Permanent Disability at45%	:	45,000/-
Pain and sufferings	:	40,000/-
Medical expenses	:	1,50,000/-
Transportation charges	:	25,000/-
Partial loss of income	:	20,000/-
Nutritious food	:	4,000/-
Future Medical expenses	:	50,000/-

		Rs. 5,50,000/-

4. Aggrieved over the compensation awarded and branding the compensation as inadequate, the claimant has preferred this appeal.

5. It is the grievance of the claimant that the Tribunal has a) not considered the disability of the claimant and ought to have adopted multiplier of 18, b) not considered the income of the appellant and c) not considered the transport expenses incurred by the claimant. The grievance of the claimant is that the Tribunal has not considered the nature of occupation of the claimant, whose leg has been shortened by 7 inches and due to such disability, the claim under the head loss of income has to be considered at 100%.

6. Heard both sides and perused the records.

7. On perusal of Ex.P15, Driving Licence, it is noted that at the time of accident, the claimant was aged 26 years. In the claim petition, it has been stated that his occupation is Driver. From the evidence of PW2, Doctor, it is clear that the claimant underwent two surgeries. The Doctor has further stated that due to the accident, the claimant sustained injuries of Comminuted fracture shaft of right femur with fracture of Tibia spine. It is also stated that the injuries sustained by the claimant are grievous in nature and there was restriction in the movement. It has been certified by the Doctor that there was shortening of right leg, due to which, the claimant will find it difficult in sitting with folded legs and climbing stairs and therefore assessed the percentage of disability at 50%

8. Considering the age and occupation of the claimant, who could not discharge his duties as Driver, as before, the monthly income of the claimant has to be taken at Rs.4,500/- as against the amount taken by the Tribunal at Rs.2,500/- p.m., by applying the multiplier of 17 and fixing the disability at 50%, the amount awarded under loss of income is at Rs.4,59,000/- would be the reasonable amount. A sum of Rs.6,000/- to be enhanced under the head of Nutritious food (viz., from Rs.4,000/- to Rs.10,000/-). Accordingly, the compensation awarded by the Tribunal under various heads is modified and enhanced as detailed below :-

Loss of income	:	Rs.4,59,000/-
Medical expenses	:	1,50,000/-
Future medical expenses	:	50,000/-
Pain and sufferings	:	40,000/-
Nutritious food	:	10,000/-
Transport expenses	:	25,000/-

Total Rs.7,34,000/-

9. In the result, Civil Miscellaneous Appeal is partly allowed by enhancing the quantum of compensation from Rs.5,50,000/- to Rs.7,34,000/-, which is payable with interest at 7.5% per annum from the date of petition till the deposit. The second respondent / insurance company is directed to deposit the said sum, as determined in this appeal to the credit of MCOP No.1362 of 2004 below within a period of four weeks from the date of receipt of a copy of this Judgment. On such

deposit, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS. The Court fee for the enhanced compensation Amount shall be paid by

the claimant. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Nagapattinam

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.P.R.Balasubramanian, Advocate, S.R.No.30277

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.29774

C.M.A.No.2262 of 2007

MR(co)
GSP(05/06/2018)



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