

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2530 of 2009

Kannaiyan @ Kittusamy

...Appellant/Claimant

Vs

1.Sundaramoorthy

2.P.Boopathy

3.IFFCO-TOKIO,

General Insurance Company Ltd.,

Tulsi Chambers, 3rd Floor,

No.195, T.V.Swamy Road,

R.S.Puram (West),

Coimbatore - 641 002.

...Respondents/Respondents

(R1 Driver of Motor Bike remained exparte before the Tribunal,
Hence notice to R1 may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and award passed
by the Motor Accidents Claims Tribunal, (I Additional Sub-
Court), Erode in M.C.O.P.No.252 of 2006 dated 03.07.2008.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : N.Vijaya Raghavan for R3

R1- Set exparte

R2- No Appearance

J U D G E M E N T

The instant appeal has been filed by the claimant seeking
enhancement of compensation under the impugned Award dated
03.07.2008 passed by the Motor Accidents Claims Tribunal,
(First Additional Sub-Court), Erode in M.C.O.P.No.252 of 2006.

2.The brief facts leading to the filing of the instant
appeal are as follows:

(i)The appellant sustained injuries as a result of an
accident caused by a motor cycle bearing Registration No.TN-37-
AE-4356 owned by the first respondent and insured with the third

respondent. The appellant preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.252 of 2006 seeking a compensation of Rs.2,00,000/-.

(ii) The Motor Accidents Claims Tribunal, by its Award dated 03.08.2008 in M.C.O.P.No.252 of 2006 directed the third respondent to pay the appellant a sum of Rs.70,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard, Mr.S.Kaithamalai Kumaran, learned Counsel for the appellant and Mr.N.Vijaya Raghavan learned Counsel for the third respondent.

5. According to the learned counsel for the appellant, the appellant had sustained 20% disability, and had also sustained fracture on the right leg and he was aged 46 years at the time of the accident. But the Tribunal has erroneously awarded only a sum of Rs.29,000/- towards disability compensation.

6. According to him, the accident having taken place in the year 2006, and considering the nature of injuries sustained by the appellant, the Tribunal ought to have granted a higher compensation towards disability.

7. Per contra, the learned Counsel for the third respondent submits that the compensation awarded by the Tribunal is a just compensation. Since the appellant sustained only 20% disability and sustained only one fracture on his leg.

8. This Court, after having considered the materials available on record and after having examined the impugned Award and after hearing the submissions of the respective counsels observes the following:-

(a) The nature of injuries sustained by the appellant as a result of the accident has not been disputed by the third respondent before the Tribunal.

(b) The appellant has also produced the disability certificate which is marked as Ex.P.11 before the Tribunal which discloses that the appellant has suffered 20% disability as a result of the accident caused by a vehicle insured with the third respondent.

(c) The accident happened in the year 2006. Considering the year of the accident, the Tribunal ought to have granted a higher compensation towards disability, instead of awarding only Rs.29,000/-.

(d) In the considered view of this Court, a sum of Rs.40,000/- towards disability compensation has to be awarded in favour of the appellant calculated at the rate of Rs.2,000/- per percentage of disability. Insofar as the other heads of compensation awarded by the Tribunal, this Court is of the considered view, the said finding of the Tribunal is correct and cannot be disturbed by this Court.

9. In the result, the compensation awarded by the Tribunal under its award dated 03.08.2008 passed in M.C.O.P.No.252 of 2006 is enhanced from Rs.70,000/- to Rs.81,000/- and the third respondent is directed to deposit Rs.81,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation, after deducting the amount already deposited to the credit of MCOP.No.252 of 2006, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the said sum by filing an appropriate application before the Tribunal. Accordingly, the Civil Miscellaneous Appeal is partly allowed without costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

at/arb
To

1.The First Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

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

+1cc to M/S.S.Kaithamalai Kumaran, Advocate Sr.63740
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.64247

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srg 01/11/2018