

IN THE HIGH COURT OF JUDICATURE AT MADRAS

17.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A. No.3225 of 2007

V. Sreenivasalu

.... Appellant /Petitioner

Versus

1. K.V.Sudhakar

2. National Insurance Co. Ltd.,

No.53, Raja Muthiah Road,

Periamet, Chennai - 600 003. .... Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree, dated 21.08.2007 made in MACT O.P. No.1271 of 2006 on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mrs. Saleem Fathima  
for M.Swamikannu

For Respondents : Mrs.P.Vijayalakshmi

JUDGMENT

This Civil Miscellaneous Appeal has been filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree, dated 21.08.2007 made in MACT O.P. No.1271 of 2006 on the file of the Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

2. The brief facts of the claim petition are as follows :-

The claimant/appellant, who aged 43 years had met with an accident on 9.3.2005 while he was proceeding in a Car bearing Registration No.TN 04 H 3469 from North to South from Nellore to Chennai, which was driven in a rash and negligent manner by the 1st respondent. When it was proceeding at Ozili Bye pass road, buffaloes came across the road and the driver of the car applied sudden brake, due to which, he lost his control and the car fell on its left side about 10 feet depth and rolled. As a

result of which the appellant sustained multifarious fractures and injuries. Hence, claimed a sum of Rs.46,00,000/- as compensation.

3. The Tribunal, upon considering the documents and evidence, has awarded a sum of Rs.2,65,738/- as compensation to the claimant. The compensation awarded by the tribunal under various heads are as follows;

|                             | Rs.           |
|-----------------------------|---------------|
| Loss of income              | : 50,000.00   |
| Loss of amenities           | : 25,000.00   |
| Pain and sufferings         | : 50,000.00   |
| Transport expenses          | : 10,000.00   |
| Extra nourishment           | : 10,000.00   |
| Mental agony                | : 10,000.00   |
| Medical bills as per Ex. P4 | : 1,10,738.10 |
|                             | -----         |
|                             | 2,65,738.10   |
| R/off                       | : 2,65,738.00 |
|                             | -----         |

4. The learned counsel for the appellant argued that the appellant sustained fracture injury due to the accident. Initially he had taken first aid at the Government General Hospital, Gudur and later he was admitted in Ramachandra Medical Centre, Chennai and given treatment for two months. It is further argued by the learned counsel for the appellant that even at the time of examination before the Tribunal he was under treatment, which was also noted by the Tribunal. Further he has argued that the sum awarded under the head 'pain and sufferings' and 'medical expenses and disability are meagre apart from the sum awarded in total as 'loss of income'.

5. On the side of the respondent, it is argued that the disability sustained by the appellant is only for a certain period and it is not a permanent one, which fact was also stated by the witness examined on the side of the claimant / appellant.

6. On perusal of the certificate issued by the Doctor, it is seen that two sets of bones in his left hand are not united still and because of this, the appellant could not do any work with his left hand. Ex.P2, Discharge summary reveals that the surgery was performed and plate was fixed to reunite the segmental fracture. The appellant underwent further treatment for removal of implant and bone grafting was also done to the claimant on 13.05.2005 in the said hospital. Further, the evidence of PW2, Doctor reveals the fact that the appellant will not be able to work using his left hand and he has assessed the disability at 55% as per Ex.P18, disability certificate.

7. Though, the tribunal has observed that he being the railway Contractor, there was no actual loss of income due to the injury sustained by him in the accident, but when the evidence of the Doctor that there was a segmental fracture and bones were taken from left hip and fixed by using plates and screws, the above said injury and the treatment underwent by the claimant and the medical expenses incurred by him have to be properly considered.

8. This Court on considering the nature of injury, period of treatment, disability sustained by the appellant and expenses to be incurred for his future medical expenses, is of the opinion that, it would be appropriate if the sum awarded by the tribunal is enhanced to some extent under certain heads. Accordingly, the sum awarded under the head loss of income and loss of amenities are enhanced by Rs.25,000/- and the sum awarded under the head Medical Bills is also enhanced by Rs.50,000/- as per Ex.P4. In respect of other heads, the amounts awarded by the tribunal are found reasonable and does not warrant any modification. Accordingly, the award of compensation is enhanced as below :-

| Heads                       | Amount awarded by the Tribunal<br>Rs. | Amount awarded by this Court<br>Rs. |
|-----------------------------|---------------------------------------|-------------------------------------|
| Loss of income              | 50,000/-                              | 75,000/-                            |
| Loss of amenities           | 25,000/-                              | 50,000/-                            |
| Pain and sufferings         | 50,000/-                              | 50,000/-                            |
| Transport expenses          | 10,000/-                              | 10,000/-                            |
| Extra nourishment           | 10,000/-                              | 10,000/-                            |
| Mental agony                | 10,000/-                              | 10,000/-                            |
| Medical bills as per Ex. P4 | 1,10,738.10                           | 1,60,738/-                          |
| Total                       | 2,65,738.10                           | 3,65,738/-                          |

9. In the result, the appeal filed by the claimant is partly allowed by enhancing the compensation awarded by the Court below from Rs.2,65,738 to Rs.3,65,738/- .

10. In view of the enhancement of the compensation amount, the second respondent insurance company is directed to deposit the enhanced amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of the Judgment. On such deposit being made, the Tribunal shall transfer to the bank account of the claimant / appellant, through RTGS within a period of two weeks thereafter. The appellant shall pay the necessary court fee for the enhanced compensation amount. Consequently, connected miscellaneous petition, if any is closed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Chief Judge,  
Motor Accidents Claims Tribunal, (Court of Small Causes),  
Chennai.

+1cc to M/S.M.Swamikkannu, Advocate Sr.64428  
+1cc to M/S.S.Arunkumar, Advocate Sr.64693

CMA No.3225 of 2007

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srg 26/03/2019

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