

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.06.2019	Pronounced on 09.08.2019
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CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3160 of 2004
and
CMP.No.1809 of 2010

Govindaraj ... Appellant/claimant
vs.

1. Thirumoorthy
 2. V.P.Kandasamy
 3. The Branch Office
United India Insurance Company Ltd.,
Big Bazaar Street
Dharapuram
Erode District.
 4. K.Marimuthu
 5. S.Mari @ Marimuthu
 6. The Branch Office
The Oriental Insurance Company Ltd.,
Gobichettipalayam
Erode District.
- (Notice to the respondents 1 and 4
given up in this CMA) ... Respondents/Respondents
- R1 & R4 -Given up
- R2 & R5-Exparte before Tribunal

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.08.2003 made in M.C.O.P.No.624 of 2001 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Erode.

For appellant : Mr.N.Manokaran
For R3 : Mr.D.Baskaran
For R6 : Mr.M.Krishnamoorthy

JUDGMENT

This is a claimant's appeal against the judgment and award dated 05.08.2003 passed by the Motor Accidents Claims Tribunal, II Additional Sub Judge, Erode, in M.C.O.P.No.624 of 2001.

2. According to the appellant, on 2.10.2000 about 8.00 a.m he travelled in the van bearing Registration No.TCQ 6876 belonging to him, from Attayampalayam to Bhavani, which was driven by the fourth respondent at a moderate speed. When the van was nearing Kumilamparapu, a lorry bearing Registration No.MDG 2237 which was owned by the second respondent, insured with the third respondent insurance company and driven by the first respondent, came from the opposite direction in a rash and negligent manner and dashed against the van, in which, the appellant was travelling. Due to the said impact, the appellant sustained grievous injuries. He filed a claim petition claiming a compensation of Rs.5,00,000/-. On consideration of the evidence and materials adduced by the parties, the Tribunal, after having held that the accident had occurred due to the rash and negligent driving of the driver of the lorry and the respondents 2 and 3, being the owner and insurer of the lorry, were liable to pay compensation to the appellant jointly and severally, quantified a total compensation at Rs.95,000/- with interest at 9%p.a. from the date of petition. Being dissatisfied with the quantum so awarded, the appellant has preferred this appeal seeking enhancement of the same.

3. The learned counsel for the appellant contended that the compensation so awarded is inadequate and the same should be enhanced on the following heads:

(a) Considering the nature of the injuries sustained by the appellant, the compensation awarded under the head "pain and suffering" be enhanced.

(b) no amount was awarded under the head "loss of amenity" and a reasonable sum has to be awarded.

4. On the other hand, the learned counsel for the third respondent/contesting respondent submitted that the Tribunal, after examining the oral and documentary evidence, has awarded the just and reasonable compensation and the same does not call for any interference at the hands of this Court.

5. Heard the learned counsel for the sixth respondent, who is the insurer of the van, in which, the appellant was travelling at the time of accident. According to him, the claim petition was dismissed as against the sixth respondent.

6. This Court considered the submissions made by the learned counsel on either side and carefully perused the records.

7. As this is a claimant's appeal, the finding regarding negligence does not require reconsideration. The only question that therefore, arises for consideration is whether the compensation awarded is inadequate and whether it requires to be

increased?

8. Before proceeding further, it is apropos to refer to the general principles relating to compensation in injury cases, as observed by the Supreme Court in [Raj Kumar v. Ajay Kumar](#) [(2011) 1 SCC 343], which runs thus:

"4. The provision of the [Motor Vehicles Act, 1988](#) ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See: [C. K. Subramonia Iyer v. T. Kunhikuttan Nair](#) - AIR 1970 SC 376, [R. D. Hattangadi v. Pest Control \(India\) Ltd.](#) - 1995 (1) SCC 551 and [Baker v. Willoughby](#) - 1970 AC 467]".

9. The appellant/claimant as P.W.1, in his evidence, has deposed that he was aged 29 years and was earning Rs.10,000/- per month by doing the business of agriculture, milk vending and weaving; as a result of the accident, he suffered fracture in right hand and right leg, due to which, the bones were mismatched and it caused permanent disability; because of the same, he cannot stand and walk continuously. P.W.1 has further deposed that for the injuries sustained in the accident that took place on 02.10.2000, he was admitted in the Erode Government Hospital and taken treatment for a period of one month as inpatient; and he incurred Rs.1,13,114/- towards medical expenditure.

10. The doctor, who treated the appellant/claimant was examined as P.W.2, according to whom, there were identifications of skin grafts at the backside and upper right arm; due to fracture, the bones of the right hand were wrongly matched and

the movement of right hand was restricted between 90 and 95 degree; as a result of the same, the appellant finds it difficult to do agriculture work; and he sustained 45% permanent disability. Ex.P21 is the disability certificate issued by P.W.2. Ex.P9 is the discharge summary; Ex.P10 is the wound certificate; Ex.P11 is the hospital receipt; Exs.P12, P13 and P18 are the medical bills; Exs.P20 and P23 are X-rays.

11.Upon evaluation of those oral and documentary evidence, the Tribunal was of the view that though the appellant has produced medical bills towards the expenses spent for treatment, he did not examine the author of any of the bills. Hence, the Tribunal has rightly doubted the authenticity of the same and awarded a sum of Rs.40,000/- towards medical bills, which this Court is not inclined to interfere.

12.With regard to disability, P.W.2 certified that the appellant sustained 45% permanent disability. However, the Tribunal has awarded only a sum of Rs.40,000/-, which is hereby enhanced to Rs.45,000/- by awarding Rs.1,000/- for each percentage of disability (Rs.1,000/- x 45%), having regard to the nature of the injuries sustained by the appellant and in the facts and circumstances of the case.

13.As rightly contended by the learned counsel for the appellant/claimant, the Tribunal has not awarded any compensation for loss of amenities of life to the appellant, who has suffered 45% permanent disability due to fracture in right hand and other injuries. Considering the gravity of the injuries sustained and the period of treatment undertaken by the appellant/claimant, this Court feels it just and reasonable to award a sum of Rs.25,000/- towards loss of amenities, besides enhancing the compensation awarded under the head "pain and suffering" from Rs.5,000/- to Rs.30,000/-.

14.At the same time, the compensation of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation charges awarded by the Tribunal, do not call for any interference by this Court, as the same are fair, just and reasonable, considering the facts and circumstances of the case. Thus, the total compensation awarded by the Tribunal is hereby enhanced from Rs.95,000/- to Rs.1,50,000/-, the details of which read as follows:

Disability - Rs.45,000/-

Medical expenses	-	Rs.40,000/-
Pain & suffering	-	Rs.30,000/-
Extra nourishment	-	Rs. 5,000/-
Transportation	-	Rs. 5,000/-
Loss of amenities	-	Rs.25,000/-
		
Total	-	1,50,000/-
		

15.At this juncture, the learned counsel for the third respondent insurance company submitted that in view of the enhancement of the compensation, the interest of 9% awarded by the Tribunal may be reduced. Though this Court is not inclined to reduce the rate of interest, but, directs the insurance company to deposit the enhanced amount of Rs.55,000/- (Rs.1,50,000/- (-) Rs.95,000/-) with interest at 9% p.a. from the date of numbering of this appeal.

16.Accordingly, this appeal is disposed of. No costs. The third respondent Insurance Company is directed to deposit the enhanced amount of Rs.1,50,000/- with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same to the Savings Bank Account of the claimant/appellant herein, through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(spl cell)

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Sub Assistant Registrar

Mra/rk

To

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

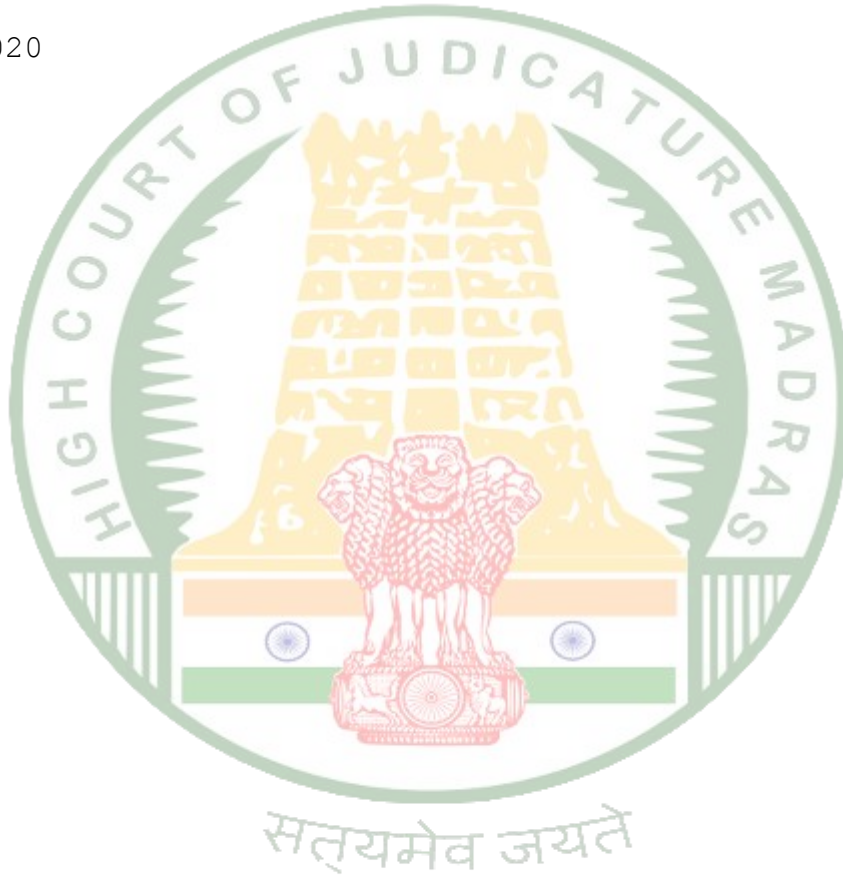
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The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104.

+lcc to Mr.M.Krishnamoorthy Advocate sr68244
+lcc to Mr.D.Bhaskaran Advocate sr68294
+lcc to Mr.N.Manokaran Advocate sr68730

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