

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2084 of 2008

Soundara Rajan

.. Appellant/Petitioner

Vs.

1. Kothandaraman

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
Woodlands Complex,
1, Bharathi Road, Cuddalore.

3. P.Lourdhusamy

4. The Divisional Manager,
United India Insurance Co. Ltd.,
13-A, Nethaji Road, Cuddalore 607 001.

(first respondent set exparte
before the Tribunal)

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.01.2008 made in MACTOP.No.405 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional Sessions Court (Fast Track Court No.2) Cuddalore.

For Appellant : Mr.S.Kalyanaraman

For R2 : Mr.N.Vijayaraghavan

For R4 : Mr. Krishnamurthy

J U D G M E N T

According to the appellant/claimant, on 25.02.2001 at about 06.30am, he was travelling in the Tractor bearing Registration No.TN 45-8546 as coolie from Veerappar to Panikankuppam. At that time, a lorry bearing Registration No.TN 31 V 3366 belonging to the first respondent and insured with the second respondent insurance company, came in a rash

and negligent manner and hit the Tractor from behind, due to which, the Tractor capsized. As a result of the same, the appellant sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, he filed a claim petition, claiming compensation of Rs.2,00,000/-. The Tribunal, after considering the oral and documentary evidence, awarded a total compensation of Rs.70,000/- with interest at 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant/claimant has preferred this appeal seeking enhancement of the same.

2.The learned counsel for the appellant/claimant submitted that the Tribunal has awarded a lesser sum of Rs.30,000/- towards disability; the compensation awarded under other heads are also very meagre; and hence, the compensation awarded by the Tribunal has to be enhanced to some extent.

3.Per contra, the learned counsel for the respondent insurance companies submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the materials available on record.

5.The appellant/claimant himself examined as P.W.1, who deposed that in the accident, he had sustained bone fracture at left leg ankle, removal of second toe in the left leg, missing of nails in both big toes and multiple injuries in all over the body; he was 42 years old and was earning Rs.80/- per day by working as loadman; and he initially took treatment at Cuddalore Government Hospital as inpatient from 25.02.2001 to 19.03.2001 and thereafter, at Private Hospital. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 30% permanent disability; Ex.P4 is the bone fracture certificate; Ex.P8 is the disability certificate; and Ex.P9 is the X-Ray. However, the Tribunal has awarded only Rs.30,000/-, which appears to be on the lower side and hence, the same is hereby enhanced to Rs.60,000/- towards 30% permanent disability by awarding Rs.2000/- per percentage of disability. Further, taking note of the nature of injuries sustained and the period of treatment taken by the appellant/claimant, the award of Rs.15,000/- towards pain and suffering is hereby enhanced to Rs.30,000/-, besides

enhancing the compensation awarded by the Tribunal towards "Transportation" and "extra nourishment" to Rs.5,000/- each.

6. Having regard to the fact that no amount was awarded towards loss of amenities, this Court is inclined to award Rs.10,000/- under this head and is accordingly, awarded. However, there is no modification with regard to the compensation awarded by the Tribunal under the heads "medical expenses" and "loss of income during treatment period". Thus, the details of the enhanced compensation are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 30%	30,000/-	60,000/-
Transport expenses	2,500/-	5,000/-
Extra nourishment	2,500/-	5,000/-
Medical expenses	5000/-	5,000/-
Pain and suffering	15,000/-	30,000/-
Loss of amenities	-----	10,000/-
Loss of Income during treatment period	15,000/-	15,000/-
Total	70,000/-	1,30,000/-

It is made clear that the enhanced sum of Rs.60,000/- shall carry interest at 7.5%pa only from the date of filing of this appeal.

7. In fine, this appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire compensation amount, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar (CS-III-MDU)

//True Copy//
Sub Assistant Registrar

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To

1.The Additional Sessions Judge,
The Motor Accidents Claims Tribunal,
(Fast Track Court No.2), Cuddalore.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.58380
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.59295
+1cc to Mr.M.Krishnamoorthy, S.R.No.59824

C.M.A.No.2084 of 2008

NR(CO)
CB(28/07/2020)