

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.4001 of 2005

M.Marimuthu

...Appellant/Petitioner

..Vs..

- 1.Kannan
 - 2.M.Selvam
 - 3.A.Elavazhuthi
 - 4.M.Aravazhi
 - 5.Oriental Insurance Company Limited,
Neyveli
 - 6.United India Insurance Company Limited,
Salem
- ... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 21.12.2004, passed in M.C.O.P.No.1135 of 1997, on the file of the I Additional District Court, Salem.

For Appellant : Mrs.Mythili Suresh

For Respondents : Mr.S.Arunkumar for R6
Mr.J.Chandran for R5
No appearance for R1 to R4

JUDGMENT

The appellant is the claimant in M.C.O.P.No.1135 of 1997 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Salem. He filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,50,000/- for the injuries sustained by him in a road accident that took place on 15.06.1997.

2.The brief case of the appellant/claimant is as follows:

On 15.06.1997, at about 09.30 hours, when the claimant was travelling as a pillion rider in a motorcycle bearing Registration No. TN F 2620 on Salem - Annathanapatti Main Road, a speeding two wheeler bearing Registration No. TN S 5994

belonging to the fourth respondent and insured with the sixth respondent United Insurance Company Limited, Salem hit the motorcycle, in which the appellant/claimant was travelling, as a result of which, he sustained injuries all over his body. According to the appellant/claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration No. TN S 5994 belonging to the fourth respondent, was the cause of the accident and that, since, the said vehicle was insured with the sixth respondent, the United Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

3.The owner of the two wheeler bearing Registration No.TN F 2620 and the insurer, the Oriental Insurance Company Limited were also added as parties in the claim petition.

4.The fourth respondent remained absent before the tribunal and therefore, he was set ex-parte. The learned I Additional District Judge, Salem after analysing the evidence on record, awarded a compensation of Rs.1,46,000/- together with interest at the rate of 9% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Mrs.Mythili Suresh, learned counsel appearing for the appellant/claimant would contend that though the appellant/claimant incurred Rs.49,642/- towards medical expenses, the tribunal has awarded only a sum of Rs.43,251/- towards medical expenses. She would further contend that a very meagre amount of Rs.25,000/- and Rs.1,000/- were awarded under the heads "pain and sufferings" and "transportation" respectively.

6.Per contra, Mr.S.Arunkumar, learned counsel appearing for the sixth respondent United India Insurance Company Limited would contend that the tribunal has awarded a just compensation of Rs.1,46,000/- to the appellant/claimant and therefore it need not be disturbed at this juncture.

7.A perusal of the records shows that the tribunal has deducted a sum of Rs.7,141/- from the medical bills (Ex.P16, Ex.P17, Ex.P21 to Ex.P25) and finally awarded a sum of Rs.43,251/- towards medical expenses. Apart from that the tribunal has awarded a sum of Rs.1,082/- for purchase of medicines and Rs.1,000/- for taking X-ray. The tribunal has also given cogent reasons for reducing a sum of Rs.7,141/- from the total amount of Rs.47,560/-and the observations made by the tribunal in paragraph no.13 of its order are unassailable.

8.The Compensation awarded by the tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs. 15,000/-
2.	Pain and sufferings	Rs. 25,000/-
3.	Medical Bills	Rs. 43,251/-
4.	Loss of earning capacity	Rs. 38,400/-
5.	Loss of income	Rs. 18,000/-
6.	Transportation	Rs. 6,000/-
Total		Rs.1,45,651/-

The tribunal has awarded a just and reasonable compensation of Rs.1,45,651/-, which is rounded off to Rs.1,46,000/- to the appellant/claimant. However, the tribunal has failed to award any amount towards loss of amenities and attender's charges and therefore, a sum of Rs.5,000/- and Rs.2,000/- are awarded towards loss of amenities and attender's charges respectively. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.15,000/-
2.	Pain and sufferings	Rs. 25,000/-
3.	Medical Bills	Rs. 43,251/-
4.	Loss of earning capacity	Rs. 38,400/-
5.	Loss of income	Rs. 18,000/-
6.	Transportation	Rs. 6,000/-
7.	Loss of amenities	Rs. 5,000/-
8.	Attender's charges	Rs. 2,000/-
Total		Rs.1,52,651/-

Thus, the claimant is entitled to a sum of Rs.1,52,651/- and it is rounded off to Rs.1,53,000/- together with interest at the rate of 7.5% per annum.

9.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.1,46,000/- to Rs.1,53,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is

directed to draft the decree only after the payment of court fee.

(iv) The sixth respondent is directed to pay the entire enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1135 of 1997, dated 21.12.2004, on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Salem within a period of four weeks from the date of receipt of a copy of this order.

(v) It is made clear that the appellant/claimant is entitled to interest only at the rate of 7.5% per annum for the enhanced compensation amount of Rs.7,000/-.

(vi) On such deposit being made by the sixth respondent, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
I Additional District Court,
Salem.

+lcc to Mrs.Mythili Suresh, Advocate, S.R.No.6404

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.7768

C.M.A.No.4001 of 2005

PP(CO)
CS/17/09/2019

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