

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1300 of 2009

N.Kanagaraj

... Appellant/Claimant

Vs.

1. P.Raju

2. M/s.D.B.V.Cotton Mills Limited,
No.2016, Mettupalayam Road, Coimbatore-31.

3. The United India Insurance Company Ltd.,
Branch Officer, Main Road, Mettupalayam.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree in M.A.C.T.O.P.no.473 of 2001 before the Motor Accident Claims Tribunal (Sub Court) Dharapuram, dated 08.11.2006.

For Appellant : Mr.M.Jaisingh

For Mr.A.Sivaji

For Respondents: Mrs.I.Malar - for R3
Notice served - No appearance - R2
Not ready in notice - R1
Ex-parte before the Tribunal

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/Sub Court, Dharapuram, in MACTOP. No.473 of 2001 dated 08.11.2006.

2. It is the case of the appellant that on 03.09.2000 at about 01.00 P.M., the appellant/claimant was proceeding from Coimbatore to Mettupalayam near Jothipuram Murugan Kovil, by his motorcycle bearing Registration No.TN 38 E 0777, at the time, the first respondent was driving the lorry bearing Registration No.TN 37 B 5220, from the opposite direction, in a rash and negligent manner, dashed against the appellant. As a result, he sustained grievous injuries on skull, chest and all over the

body and admitted in Sri Ramakrishna Hospital, Coimbatore. Hence, the appellant filed a claim petition before the Tribunal against the driver and owner of the vehicle and its insurer, claiming a sum of Rs.10,00,000/- as compensation.

3. In order to prove his claim, before the Tribunal, the appellant has examined himself as PW1 and the Doctor (PW2) and marked 14 documents viz., Ex.P1 to Ex.P14. On the side of the respondents, no one was examined and no evidence was adduced. After analysing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Lorry. The Tribunal has awarded a sum of Rs.1,05,200/- as compensation to the claimant.

4. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this present appeal before this Court.

5. The learned counsel for the appellant would submit that the appellant was working as a Fitter in private company and earning a sum of Rs.5,500/- per month as salary. For which, the appellant has produced the income certificate viz., Ex.P7. Without considering the same, the Tribunal has fixed the income of Rs.1,500/- per month, which is very low. The appellant was admitted in the hospital and underwent surgery. The appellant has sustained grievous injury and the Doctor/PW2 has assessed his disability at 35%. The appellant himself is not able to do his work and the appellant is the sole breadwinner of his family and due to the accident, he sustained grievous injury and he could not do his normal work in future also. The appellant has already spent a sum of Rs.3,00,000/- for his medical expenses and still he is undergoing treatment. Therefore, the amount awarded by the Tribunal is very meager and he prays for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the third respondent/Insurance company would submit that the Tribunal has awarded a sum of Rs.1,05,200/- is excessive and he prayed to dismiss the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel for the third respondent and also perused the materials available on record before this Court.

8. From the materials available on record, it is seen that the Tribunal reduced the percentage of disability as assessed by PW2 Doctor from 35% to 30%. The appellant suffered 35% disability due to the injuries sustained by him in the accident and the reason given by the Tribunal for reducing the percentage of disability is not correct. The Tribunal has awarded a sum of Rs.30,000/- for permanent disability and therefore, this Court is inclined to modify the same at Rs.60,000/-. The appellant was working as a Fitter in a private company and earning a sum of Rs.5,500/- per month as salary. In order to prove the same, the appellant has produced a income certificate viz., Ex.P7. But the Tribunal has fixed a monthly income of Rs.1,500/- per month and awarded a sum of Rs.10,000/- towards loss of income, which is meager and hence, it is hereby enhanced to Rs.65,000/-.

9. The Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering. Considering the nature of injuries sustained by the appellant, a sum of Rs.20,000/- is awarded instead of Rs.10,000/- and for medical bills also, the awarded amount is enhanced from Rs.50,000/- to Rs.64,000/-. The compensation awarded by the Tribunal is modified as follows:

Sl.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Permanent disability	30,000/-	60,000/-
2	Transportation	3,000/-	3,000/-
3	Extra nourishment	500/-	1,000/-
4	Damages to Article	200	1,000/-
5	Medical expenses	50,000/-	64,000/-
6	Pain and suffering	10,000/-	20,000/-
7	Loss of earning capacity	10,000/-	65,000/-
	Total	1,05,200/-	2,15,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,05,200/- is hereby enhanced to Rs.2,15,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The third respondent Insurance Company is directed to deposit the enhanced award amount with interest,

less the amount if already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any already withdrawn. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Sub Court, Dharapuram.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.A.Sivaji, Advocate sr.100243

+1cc to M/s.I.Malar, Advocate Sr.100357

C.M.A.No.1300 of 2009

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srg 30/04/2021

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