



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1511 of 2009

G.Mohan

...Appellant/Petitioner

.Vs.

1.G.Periyasamy

2.The Branch Manager,

Iffco-Tokyo General Insurance Co. Ltd.,

Thulasi Chambers,

3rd floor, 195 T.V.Sami road (W),

R.S.Puram, Coimbatore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.10.2008 passed in MCOP.No.281 of 2007 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.1, Erode.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.N.Vijayaraghavan for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.281 of 2007 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.1, Erode. He filed the 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 13.12.2006.

2. The case of the claimant is that on 13.12.2006, when he was riding his motorcycle bearing Registration No. TN 45 B 6070 along Manickampalayam road near Housing Board, a speeding minidor van bearing Registration No. TN 33 AC 0795 belonging to the first respondent hit the motorcycle, as result of which, he fell down from the motorcycle and sustained multiple injuries all over his body. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the



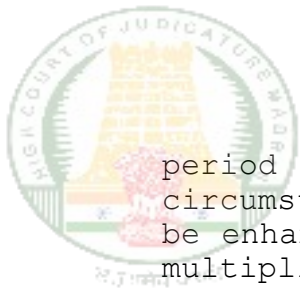
minidor van bearing Registration No. TN 33 AC 0795 belonging to the first respondent and that since the said minidor van was insured with the second respondent / IFFCO TOKYO General Insurance Company Limited both of them are jointly and severally liable to pay compensation to him.

3. The first respondent remained absent before the Tribunal and therefore, he was set ex-parte. The IFFCO TOKYO General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Motor Accidents Claims Tribunal / Additional District Judge, Fast Track Court No.1, Erode after analysing the evidence on record, awarded a compensation of Rs.54,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Manokaran, learned counsel appearing for the appellant / claimant contended that though Dr.R.Sampath (PW2) had assessed the partial permanent disability as 22%, the Tribunal has awarded only a sum of Rs.22,000/- towards disability especially when he has suffered fracture of both bones on his right leg as evidenced by the discharge summary (Ex.P9). He would further contend that the Tribunal has awarded only a sum of Rs.7,000/- towards "loss of income" when the Principal of K.S.Rangasamy College of Technology, Thiruchengode has stated that the injured was working as a Lecturer in the Department of Mathematics and also certified that he was on loss of pay for the period from 13.12.2006 to 02.05.2007 amounting to Rs.60,097/-. He would therefore contend that a sum of Rs.60,097/- should be awarded towards "loss of income". His another contention is that the Tribunal had awarded a very meagre amount under other heads and therefore he prayed for enhancement of compensation.

5. Heard Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent / IFFCO TOKYO General Insurance Company Limited.

6. It is pertinent to point out that the claimant is a Lecturer working in K.S.Rangasamy College of Technology, Thiruchengode in the Department of Mathematics. His salary is mentioned as Rs.13,028/- per month. In the road accident, the claimant had sustained fracture of both bones of his right leg and Dr.R.Sampath (PW2) had also assessed the partial permanent disability as 22%. The Principal of K.S.Rangasamy College of Technology, Thiruchengode had clearly stated that a sum of Rs.60,097/- was withheld from the salary of the claimant for the



period from 13.12.2006 to 02.05.2007. In the facts and circumstances, the compensation awarded by the Tribunal should be enhanced. Since there is no functional disability, adopting multiplier method is not warranted as far as the present case is concerned and since the accident took place in the year 2006, a sum of Rs.2,000/- per percentage of disability is awarded towards "loss of earning capacity" which would come to Rs.44,000/-. The award passed by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.44,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.1,000/-
7.	Loss of income	Rs.60,097/-
Total		Rs.1,37,097/-

7. Thus, the compensation awarded by the Tribunal is enhanced from Rs.54,000/- to Rs.1,37,097/- which would carry interest at the rate of 7.5% per annum.

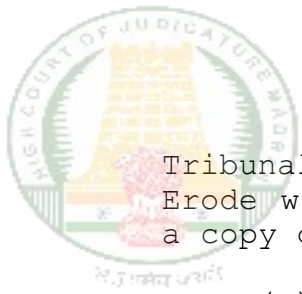
8. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.54,000/- to Rs.1,37,097/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent / IFFCO TOKYO General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,37,097/- (less the amount already deposited) 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 MCOP.No.281 of 2007 on the file of the Motor Accidents Claims



Tribunal / Additional District Court, Fast Track Court No.1, Erode within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Additional District Court,
The Fast Track Court No.1,
Erode.

Copy to

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

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.80824
+1cc to M/s.N.Manokaran, Advocate Sr.80406

CMA.No.1511 of 2009

ad[co]
srg 15/07/2021