

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1580 of 2010

1. Karthi @ Packirsamy ... Appellant/Petitioner

Versus

1.Paneerselvam

2. Jayanthi

3. The New India Assurance Co. Ltd.,  
represented by its Branch Manager,  
No.149, Bharathiyar Road,  
Karaikal. ... Respondents /Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order of Motor Accident Claims Tribunal, Additional District Judge, Karaikal, dated 30.07.2009 made in M.A.C.T.O.P.No. 147 of 2007.

For Appellant : M/s.T.Lavanya for  
S. Sounthar

For Respondents 1 and 2 : No appearance

For Respondent - 3 : M. Krishnamoorthy

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant to enhance the amount awarded in M.C.O.P.No.147 of 2007 passed by the Additional District Judge, Karaikal, dated 30.07.2009.

2.The facts of the case are as follows:

On 12.01.2007 at about 10.30p.m when the appellant herein was going on the Nedungadu Road, from Karaikal to Nedungadu from east to west slowly, the appellant noticed a Mini Lorry bearing Registration No. PY-02-D-2133 was parked on the middle of the road irregularly and the back side was completely

covered. There was no signal lights luminating in the vehicle. When the appellant was nearing the parked van, the respondent without making any signal suddenly taken reverse side driving of the vehicle and by that the rest of the narrow lane like road available for parking also closed and the appellant vehicle, crossing the extreme other end of the road was suddenly hit by the reversing van due to which, the appellant has fallen down from the vehicle and suffered injuries by fracture and tarring of the nose and injuries all over the body. The appellant was immediately taken to General Hospital, Karaikal and treated as in-patient and thereafter he was discharged from the G.H., Karaikal and readmitted in Sugan Priya Hospital, Karaikal. Due to the injuries sustained the appellant was unable to do any work.

3. Due to the injuries sustained by the appellant, he filed M.C.O.P.No.147 of 2007 on the file of Additional District Judge, Karaikal seeking compensation for a sum of Rs.5,00,000/-. The Tribunal, on a consideration of oral and documentary evidence, has awarded a sum of Rs.79,365/- payable with interest at the rate of 7.5% per annum.

4. Aggrieved over the same, the appellant has come forward with the present appeal.

5. The learned counsel for the appellant contend that the compensation amount awarded by the Tribunal under different heads are very low. Thus, the learned counsel for the appellants sought enhancement in the compensation amount awarded by the Tribunal.

6. Per Contra, the learned counsel for the respondent/Insurance Company contend that, the tribunal erred in awarding amount under various heads. In respect of the head disability Dr. Rajagopal, who was examined as PW-2, before the Tribunal in the cross examination has stated that he has not given treatment to the appellant herein and further contend that the appellant is the native of Karaikal and he was admitted in General, Hospital, Karaikal and then he had taken treatment in Sugam Priya Hospital. The appellant has not explained why he has taken the disability certificate from the doctor who is practicing in Mannarkudi. Therefore, the disability assessed by the Doctor is not acceptable and the amount awarded under the head partial disability is not a reasonable one. The tribunal awarded huge amount under different heads and the same is not proper. Hence the respondent/Insurance company seeks to set aside the award passed by the Tribunal and dismiss this appeal.

7. From the perusal of the materials available on record, it is seen that the Tribunal, had examined 3 witnesses and

marked 15 exhibits. On the side of the respondents, neither oral nor documentary evidence was adduced.

8. The Tribunal, on the basis of oral evidence of PW-1, assessed that, at the time of accident he was aged about 21 years and he was working as a coolie and he would get a sum of Rs.100/- per day. Due to the accident he was not able to work for 3 months, hence loss of income Rs.7,500/- was awarded and the same is enhanced to 4 months, accordingly Rs.10,000/-, accordingly/-

9. Considering the nature of injuries and treatment and taking note of the medical records, the disability was fixed as 20% thus, the Tribunal awarded Rs.40,000/- for partial disability. For Pain and sufferings Rs.20,000/- was awarded. The Tribunal after verifying Exs. P7 to P13 awarded Rs.11,865 and Rs.836 towards medical expenses.

10. Thus, considering the facts and circumstances of the case, this Court finds that the amount awarded by the Tribunal needs to be enhanced. Hence, the award passed by the Tribunal is enhanced as follows.

| S.No. | Particulars         | Amount awarded by the Tribunal | Amount awarded by the High Court |
|-------|---------------------|--------------------------------|----------------------------------|
| 1     | Loss of Income      | Rs.7,500                       | Rs.10,000                        |
| 2     | Pain and Sufferings | Rs.20,000                      | Rs.25,000                        |
| 3     | Medical Expenses    | Rs.11,865/-                    | Rs.11,865/-                      |
| 4     | Disability          | Rs.40,000                      | Rs.40,000                        |
| 5     | Extra Nourishment   | -                              | Rs.10,000                        |
| 6     | Transport           | -                              | Rs.7,500                         |
| 7     | Amenities           | -                              | Rs.7,500                         |
| 8     | Attendar charges    | -                              | Rs.7,500                         |
|       | Total               | Rs.79,365/-                    | Rs.1,19,365/-                    |

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed:

(i) The award of the Tribunal is enhanced to Rs.1,19,365/- from Rs.79,365/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the Tribunal has held that the respondent/Insurance Company is liable to pay the award and the same is hereby confirmed and the Insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above in equal share, by filing proper application before the Tribunal.

(v) There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Motor Accidents Claims Tribunal,  
Additional District Judge,  
Karaikal.
2. The Section Officer,  
V.R. Section, High Court, Madras - 104.

+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 27072

+lcc to Mr.S.Sounthar, Advocate, S.R.No. 27506

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LN(CO)  
GN(29/06/2020)