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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM :

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CIVIL MISCELLANEOUS APPEAL NO.2197 OF 2010

Suresh

...Appellant / Petitioner

..Vs..

1.M/s.Velmurugan Dairy,
Veerarakkiam Post,
Krishnarayapuram Taluk,
Karur District.

2.The United India Insurance Company Ltd.,
No.30, Ramakrishnapuram North,
Karur.

...Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgement and decree dated 27.01.2009 made in MCOP No.293 of 2007 on the file of the Court of Motor Accident Claims Tribunal,(Fast Tract Court-III) Dharapuram following among other in so far as awarding lesser compensation on the appellant is concerned.

For Appellant : Mr.N.S.Sivakumar

For Respondents : Mrs.R.Srividya for R2
R1-set exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 27.01.2009 made in MCOP No.293 of 2007 on the file of the Court of Motor Accident Claims Tribunal, (Fast Track Court-III), Dharapuram on raising various grounds.



2. The appellant is the claimant, who is aggrieved by the compensation awarded by the Claims Tribunal, filed this Civil Miscellaneous Appeal seeking for higher compensation and restricted his claim for a sum of Rs.1,00,000/-. The Tribunal has not considered the permanent disability of the appellant as per Ex.P13, Disability Certificate, which would say that the appellant/petitioner sustained 22% disability due to malunion of radius bone and suffered continuous triable in his stomach and awarded lesser compensation. The Tribunal has fixed disability as 20% after considering an extensive detailed Medical Report submitted by the appellant. The Tribunal, considering the young age of the petitioner, was of the view that per 1% disability, compensation at a sum of Rs.2000/- could be calculated and as such, for 20% disability, the Tribunal awarded a sum of Rs.20,000/-. In the absence of medical bills, the Tribunal awarded an amount of Rs.2000/- towards medical expenses, and awarded a sum of Rs.2500/- towards loss of income. Challenging the same, the appellant filed this Civil Miscellaneous Appeal praying for enhancement of compensation.

3. The appellant /claimant, on 02.04.2003, while travelling as a pillion rider in the motor cycle from Oonchalur to Kangayam, near Oonchalur V.A.O. Office on Oonchalur, a lorry bearing registration No.TCY 7909 came in a rash and negligent manner and dashed against the motor cycle causing grievous injuries to the appellant. Immediately, he was taken to G.H. Erode for treatment. Only due to the negligent act of the said lorry driver, the appellant sustained injuries. The appellant was working as Mechanic and was earning a sum of Rs.3000/- per month. Now, due to grievous injuries sustained by the appellant, he suffered with disability and he is not able to work or earn. He was admitted at G.H. Erode as inpatient for six months and incurred heavy medical expenses. Hence, the appellant prayed for a sum of Rs.3,00,000/- as compensation.

4. A counter affidavit has been filed by the second respondent denying all the averments in the claim petition and that placing burden on the appellant to prove the same. It is stated that the respondents are not liable to pay any compensation to the appellant as the accident occurred due to rash and negligent driving of the appellant himself. It is also stated in the counter affidavit that it is not proved by producing any material evidence that the appellant was working



as Mechanic at the time of accident and was earning a sum of Rs.3000/- and no bills or vouchers have been produced to show that the appellant was admitted in G.H, Erode and undergone treatment for a period of six months. From the Accident Register, Hospital Discharge Summary and Medical Report, which were produced before Tribunal, the Tribunal came to the conclusion that the appellant sustained grievous injuries and awarded a sum of Rs.20000/- for 20% disability as per the Disability Certificate issued by the Doctor, PW2. Even though, the Doctor has fixed the disability as 22%, the Tribunal has come to the conclusion that the total disability as 20% instead of 22%. In addition to the above, considering injuries sustained by the appellant, the Tribunal awarded a sum of Rs.13,000/- towards injuries and a sum of Rs.2000/- towards Medical Expenses and a sum of Rs.1000/- towards Transport Charges and a sum of Rs.1500/- has been awarded towards Food and Nutrition and towards loss of income a sum of Rs.2500/-. Accordingly, the Tribunal has awarded a total sum of Rs.40,000/- as compensation and to be paid by the respondents jointly and severally to the claimant/appellant.

5. Aggrieved by the same, the learned counsel for the appellant would submit that for fixing disability, the Tribunal ought to have taken 2% for the injuries sustained and accordingly, this Court is of the view that amount fixed by the Tribunal is very meagre and the same is required to be enhanced as Rs.2000/- per 1% disability and as such Rs.40000/- is fixed for 20% disability and a sum of Rs.20000/- to be paid towards pain and sufferings and Rs.5000/-; for Nutrition and medical expenses Rs.3000/- and a sum of Rs.3000/- for Transport expenses and a sum of Rs.9000/- to be paid towards loss of income and totally, a sum of Rs.80000/- to be paid as compensation. Accordingly, the details of enhancement of award under each head, are mentioned below:

S. NO	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability at 20% (2000x20)	20,000	40,000	enhanced
2.	Food & Nutrition	1,500	5,000	enhanced



S. NO	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Medical expenses	2,000	3,000	enhanced
5.	Pain and sufferings	13,000	20,000	enhanced
6.	Loss of income	2,500	9,000	enhanced
7.	Transport charges	1,000	3,000	
	Total	40,000	80,000	Enhanced by Rs.40,000/-

6. In view of the above facts and circumstances, this Court is of the view that the amount awarded by the Tribunal is very meager and the Tribunal has not fixed the compensation as per the relevant Medical certificates submitted by the appellant and hence, this Court is inclined to modify the same in the above stated manner. The respondents are directed to pay a sum of Rs.80000/- to the appellant herein with interest @ 7.5% from the date of filing of the appeal after deducting the amount already paid.

7. It is represented that the amount has been already deposited by the second respondent/Insurance Company. Hence, the second respondent/Insurance Company is directed to pay the balance amount to the appellant within a period of 4 weeks from the date of receipt of a copy of this order. The claimant can withdraw the said sum by filing an appropriate petition before the Court below.

8. Accordingly, this Civil Miscellaneous Appeal, is allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

dn



The Motor Accident Claims Tribunal,
(Fast Tract Court-III),
Dharapuram.

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.101252

+1cc to Mr.N.S.Sivakumar, Advocate SR.No.100345

Civil Miscellaneous Appeal No.2197 of 2010

PVS(CO)
RVM(27/09/2021)