

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2879 of 2009

R.Devarajan

...Petitioner/Appellant

Vs

1.M.Devi

2.The Branch Manager,
National Insurance Company Limited,
No.661, Trunk Road,
Poonamallee,
Chennai - 600 056.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 25.07.2005 made in MCOP.No.772 of 2000 on the file of the Motor Accident Claims Tribunal, District Judge, Fast Track Court No.II, Kancheepuram.

For Petitioner : Mr.N.Veerasamy

For Respondents : Mr.S.Arunkumar for R2

R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the Judgment and Decree dated 25.07.2005 made in MCOP.No.772 of 2000 on the file of the Motor Accident Claims Tribunal, District Judge, Fast Track Court No.II, Kancheepuram.

2. The case of the appellant/claimant is that, the appellant was one among the passenger in a car belonging to his employer bearing Registration No.TN 21 C 3006. On 13.02.2000, they were returning from Madras to Kancheepuram. At about 9.45 p.m., the first respondent's lorry bearing Registration No.TSH 5857 was going in front of the car. Suddenly, the driver of the lorry without giving any signal took a right turn and dashed on the car. Due the said accident the appellant and others sustained grievous injury and immediately admitted in MIOT

Hospital and the car was totally damaged. Hence, the appellant filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.02.2000.

3. The second respondent/Insurance Company filed a counter denying all the allegation submitted by the appellant and denied the nature of injuries and manner of accident and also submitted that the amount of compensation claimed is excessive.

4. On the side of the claimant/appellant the claimant himself examined as P.W.1 and Dr.A.Vaithiyalingam was examined as P.W.2 and 20 documents were marked under Exs.P1 to P20. On the side of the respondents one Ms.Selvi, staff of the first respondent Company has been examined as R.W.1 and Ex.P1 has been marked.

5. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent to pay a sum of Rs.30,605/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel for the appellant contended that the learned Tribunal has erred in awarding only a sum of Rs.30,605/- as compensation as against the total claim amount of Rs.4,00,000/-. The learned Tribunal ought to have awarded further more amount considering that the appellant sustained fracture of left shoulder and other grievous injury on the chest and he has under gone treatment in different hospitals, namely St.Thomas Hospital, Chennai, Dr.S.Selvamani Hospital and also Government Hospital. The learned Tribunal ought to have awarded a sum of Rs.25,000/- under the head of pain and suffering whereas the learned Tribunal has not awarded any amount under pain and suffering. The learned Tribunal has awarded only a sum of Rs.15,000/- under the head of permanent disability. The Doctor has assessed 30% disability, the learned Tribunal ought to have awarded a sum of Rs.30,000/- towards disability. The learned Tribunal has not awarded any compensation on the head of loss of future earning power and prayed for enhancement of compensation.

7. The learned counsel appearing for the second respondent/Insurance Company submitted that there was no FIR filed. The motor vehicle inspection report has been filed only to show that the accident has taken place. One Inspector of Police issued the charge sheet on 15.09.2000 which is only a

xerox copy stated to be a true copy. It is also found that Doctor has been examined as P.W.2., in the cross examination P.W.2 admitted that the claimant has sustained one fracture of bone clavicle which has also reunited. In the absence of any other valid medical report the Court below rightly taken 15% disability and awarded a sum of Rs.15,000/- under the head of disability and for the other heads the learned Tribunal has awarded another sum of Rs.15,650/- and totally a compensation of Rs.30,650/-, which is just compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

9. From the materials available on record, it is seen that the appellant has claimed that he is a Advocate clerk and after the accident, due to the injuries he has difficulties in doing with work as before. The appellant has not substantiated the same by any acceptable evidence that he could not do work as he was doing earlier. In such circumstances, the learned Tribunal awarded a sum of Rs.15,000/- considering the disability at 15% is proper. The appellant was admitted in three different hospitals, the Tribunal has not awarded any amount towards transportation and loss of income. Though there was no evidence to show that the appellant has incurred loss of income since he was admitted in hospital he would have incurred loss of income. Hence, a sum of Rs.2,000/- awarded under transportation and a sum of Rs.3,000/- towards loss of income. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability (15%)	15,000	15,000	Confirmed
2.	Pain and suffering	15,000	15,000	Confirmed
3.	Medical expenses	605	605	Confirmed
4.	Transportation	-	2,000	Granted
5.	Loss of Income	-	3,000	Granted

	Total	30,605/-	35,605/-	Enhanced by Rs.5,000/-
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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,605/- is hereby enhanced to Rs.35,605/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
District Judge, Fast Track Court No.II,
Kancheepuram.

Copy to

The Section Officer,
VR Section,
Madras High Court.

+1 CC to Mr.N.Veerassamy, Advocate sr 104221.

+1 CC to Mr.S.Arunkumar, Advocate sr 104771.

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BS (CO)
SP(24/08/2020)