

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3062 of 2010

Podaran

...Appellant

vs.

1. Lakshmi Narayanan

2. K.Chellamuthu

3. The Oriental Insurance Company Limited,
Gobichettipalayam.

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgement dated 30.06.2000 passed in MCOP.No.1210 of 1996 on the file of the Additional District Judge, Motor Accident claims Tribunal, Erode.

For Appellant : Mr.Prithivi

For Respondents : Mr.Elveera Ravindran for R2
R1- Given up
R2 - Not ready

JUDGMENT

The appellant is the claimant in MCOP.No.1210 of 1996 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Erode. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident on 05.08.1996.

2. The case of the claimant is that on 05.08.1996, he was riding his bicycle on Bhavani - Erode Road and at about 9.00 hrs, a speeding bus bearing Registration No.TN. 36/5855, hit him, as a result of which, he sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the second respondent was the cause of the accident and that since the said bus was insured with the Oriental Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

3. The learned Motor Accident Claims Tribunal / II Additional District Judge, Erode after analysing the evidence on record, awarded a compensation of Rs.76,500/- together with interest at the rate of 12% 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.Prithivi, learned counsel appearing for the appellant / claimant contended that though Dr.J.Paramasivam (PW3) had assessed the partial permanent disability as 50%, the Tribunal had awarded a meagre amount of Rs.76,500/- towards compensation and therefore prayed for enhancement of compensation.

5. Per contra, Mr.Elveera Ravindran, learned counsel appearing for the Oriental Insurance Company Limited contended that the Tribunal had awarded a just compensation of Rs.76,500/- after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. No appearance on behalf of the 1st respondent.

7. A perusal of the records shows that the claimant had suffered a fracture on his right shoulder and a head injury. Since he was a labourer in a Spinning Mill, adopting multiplier method is warranted in the present case, as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.J.Paramasivam (PW3) had assessed the partial permanent disability as 50%. Since the disability of 50% cannot be for the whole body, 10% disability is taken up for calculating "loss of earning capacity". The appellant / claimant was aged 49 years on the date of the accident and the proper multiplier to be adopted in the instant case is 13, as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The accident took place in the year 1996 and therefore a sum of Rs.2,500/- is fixed as the notional monthly income of the appellant / claimant.

Loss of earning capacity:

$$\begin{aligned} &= \text{Rs.}2,500/- \times 12 \times 13 \times 10/100 \\ &= \text{Rs.}39,000/- \end{aligned}$$

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for 6 months and therefore, a sum of Rs.15,000/- (Rs.2,500/- x 6 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No .	Head	Amount granted by this Court
1.	Partial permanent disability	Rs.39,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Medical expenses	Rs. 25,000/-
4.	Transportation	Rs.2,000/-
5.	Extra nourishment	Rs.8000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs. 500/-
8.	Loss of Income	Rs.15,000/-
Total		Rs.1,01,500/-

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.76,500/- to Rs.1,01,500/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The 3rd respondent / Oriental Insurance Company Limited and the 1st respondent are directed to deposit the enhanced compensation amount i.e., Rs.1,01,500/- (less the amount already deposited) jointly and severally 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.1210 of 1996 on the file of the Motor Accident Claims Tribunal /II Additional District Judge, 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

rka

To

The Motor Accidents Claims Tribunal,
II Additional District Judge,
Erode.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Kaithamalai Kumaran, Advocate, S.R.No. 95391
+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.95281

CMA.No.3062 of 2010

MG(CO)
GN(22/09/2020)