

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1432 of 2011

Muthan

... Appellant

.Vs.

1.Ravi

2.The Divisional Manager,

The United India Insurance Company Limited,

No.46, Katpadi,

Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 03.01.2006 passed in M.C.O.P.No.88 of 2002 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tiruvannamalai.

For Appellant : Ms.S.K.Subathara

For R1 : No appearance

For R2 : Mr.C.Paranthaman

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.88 of 2002 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tiruvannamalai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident on 09.12.2000.

2. The case of the claimant is that on 09.12.2000, he was a pillion rider in a TVS 50 moped on Mekkalur - Keekkalur road and at about 03.00 P.M., a speeding lorry bearing Registration No. TNL 6365 hit him, as a result of which, he sustained multiple injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the first respondent was the cause of the accident and that since the lorry was insured with the second respondent / United India Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The first respondent / owner of the lorry remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent / United India Insurance Company Limited, contested the claim petition on all the grounds available to the insured. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Tiruvannamalai, after analysing the evidence on record, awarded a compensation of Rs.39,250/- together with interest at the rate of 7.5% per annum to the claimant. Not being 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. Ms.S.K.Subathara, learned counsel appearing for the appellant / claimant contended that though Dr.Ravindran (P.W.2) assessed the partial permanent disability of the claimant as 30%, the Tribunal without assigning any reason, reduced the same to 15% and awarded a very meagre compensation of Rs.29,250/- towards loss of earning capacity, especially, when the claimant had sustained a fracture on his fifth rib. She therefore prayed for enhancement of compensation.

5. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent / United India Insurance Company Limited contended that the Tribunal after considering all the aspects of the case has awarded a just compensation and therefore the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent / owner of the lorry.

7. A perusal of the discharge summary (Ex.P4) shows that the claimant was admitted as an in-patient on 10.12.2000 and discharged on 17.12.2000. He was also given treatment for the blunt injury on his chest and for the fracture of fifth rib. Dr.Ravindran (P.W.2) has assessed partial permanent disability as 30%. The Tribunal after reducing the same to 15%, adopted multiplier method and awarded a sum of Rs.29,500/- towards loss of earning capacity. The claimant in the claim petition has contended that he was an agricultural labourer earning a sum of Rs.3,000/- per month and was aged 50 years on the date of accident. Since there is no functional disability, a sum of Rs.30,000/- is awarded towards partial permanent disability. The claimant has not adduced any evidence to show that he was earning a sum of Rs.3,000/- per month. Since the accident took place in the year 2000, the notional monthly income of the claimant is fixed as Rs.2,500/-. On account of accident, he would not have been in a position to attend to his routine work atleast for six months and the compensation towards loss of income is calculated as Rs.15,000/- (Rs.2,500/- X 6 months). 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.30,000/-
2.	Pain and sufferings	Rs.5,000/-
3.	Loss of income	Rs.15,000/-
4.	Extra nourishment	Rs.2,000/-
5.	Transportation	Rs.2,000/-
6.	Attender's charges	Rs.1,000/-
7.	Damage to clothes	Rs.500/-
Total		Rs.55,500/-

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.39,250/- to Rs.55,500/-.

(iii) The second respondent / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.55,500/- (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 M.C.O.P.No.88 of 2002 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

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

(v) Since the appeal is filed with a delay of 552 days, the appellant / claimant is not entitled to claim interest for this period.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Thiruvannamalai.

2.The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to M/s.M.Malar, Advocate SR.94357
+1cc to Mr.C.Paranthaman, Advocate SR.94029

C.M.A.No.1432 of 2011

GP (CO)
CB(10/09/2020)



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