

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3475 of 2009

V.Munusamy vs. ...Appellant/Petitioner

1. Tamil Nadu State Transport Corp. Ltd.,
Rep. by its Managing Director,
Villupuram Division II,
Rangapuram, Vellore.

2.A.Vinayagam

3.The Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
J.P.Complex, Katpadi road,
Vellore.

4.The United India Insurance Co. Ltd.,
235, Gandhi road,
Arni.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.03.2006 passed in MCOP.No.200 of 2002 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Arni.

For Appellant : Mr.P.Seshadri

For Respondents : Mr.P.Paramasivadoss for R1
Mr.G.Udaya Sankar for R4
No appearance for R2 and R3
R2 - Exparte
R3 - Givenup

JUDGMENT

The appellant is the claimant in MCOP.No.200 of 2002 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Arni. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,70,000/- for the injuries sustained by him in a road accident that took place on 10.02.2002.

about 05.30 am, when he was travelling in a Tamil Nadu State Transport Corporation Limited bus bearing Registration No. TN 23 N 0847, another speeding bus bearing Registration No. TN 27 C 9199 hit the bus in which the claimant was travelling, as a result of which, the claimant sustained injuries all over his body. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the bus bearing Registration No. TN 27 C 9199 belonging to the second respondent and that since the said bus was insured with the fourth respondent, both the owner and the insurer are jointly and severally liable to pay compensation to him.

3. The second respondent remained absent before the Tribunal and therefore, he was set *ex parte*. The claim petition against the third respondent / Oriental Insurance Company Limited was dismissed by the Tribunal since the claimant gave up his claim against the third respondent. The first and fourth respondents contested the claim petition. The learned Motor Accidents Claims Tribunal / Subordinate Judge, Arni after analysing the evidence on record, awarded a compensation of Rs.35,300/- together with interest at the rate of 9% per annum to the claimant and directed the fourth respondent / United India Insurance Company Limited to pay the same.

4. 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.

5. Mr.P.Seshadri, learned counsel appearing for the appellant / claimant contended that though Dr.Kartheesan (PW2) had assessed the partial permanent disability as 25%, the Tribunal has reduced the same to 15% without assigning any reason. He would further contend that the award passed by the tribunal is very meagre, especially, when it is clear from the evidence on record that the claimant was not able to stand even while deposing before the Court. He therefore prayed for enhancement of compensation.

6. Per contra, Mr.G.Udaya Sankar, learned counsel appearing for the fourth respondent / United India Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. A perusal of the medical records shows that the claimant sustained a fracture of 4th and 5th metatarsal bones (right foot), and Dr.Kartheesan (PW2) had assessed the partial permanent disability as 25%. However, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has reduced the same to 15% without assigning any reason. It is pertinent to point out that the Tribunal itself has recorded that the claimant was not able to stand even at

the time of giving evidence before the Court. Therefore, the disability is taken up as 25% as calculated by Dr.Kartheesan (PW2). It is contended that the claimant was a mechanic, earning a sum of Rs.5,000/- per month. In the absence of any income proof, a sum of Rs.3,500/- is fixed as notional monthly income of the claimant. Since there is no functional disability, multiplier method is not warranted in the instant case. Therefore, awarding a sum of Rs.2,000/- per percentage of disability, in the opinion of this Court would meet the ends of justice. The award passed by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.21,000/- (Rs.3,500/- x 6 months)
2.	Partial Permanent Disability	Rs.50,000/-
3.	Pain and sufferings	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.1,000/-
Total		Rs.94,000/-

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.35,300/- to Rs.94,000/- which would carry interest at the rate of 7.5% per annum.

9. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.35,300/- to Rs.94,000/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The fourth respondent / United India Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.94,000/- (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 MCOP.No.200 of 2002 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Arni 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

mbi

To

The Motor Accidents Claims Tribunal,
The Subordinate Court,
Arni.

Copy To

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

+1cc to Mr.G.Udayasankar, Advocate, S.R.No. 80894

CMA.No.3475 of 2009

PVS (CO)
GN(04/09/2020)