

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.390 of 2009

Muthusamy

.. Appellant/Petitioner

Vs.

1.Mr.M.Sivasubramaniam
(1st respondent was set exparte before the Tribunal)
2.M/s.The New India Assurance Company Limited,
163, Madhanagopalapuram,
Perambalur.

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.11.2008 made in M.C.O.P.No.491 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), Perambalur.

For Appellant : Mr.C.Vidhusan

For R1 :set exparte before the Tribunal

For R2 :Mr.S.Manohar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 20.11.2008 made in M.C.O.P.No.491 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), Perambalur.

2. The brief facts in the claim petition are as follows:-

(i) On 04.11.2006 at about 10.30 hrs, the claimant was standing on the northern side of the main road at Sangupettai, Perambalur. At that time, a share Auto bearing Registration No.TN 46 D 9831 was coming from West to East direction from Kamarajar Arch to East, driven by its driver in a rash and negligent manner and dashed against the claimant.

(ii) Due to the impact, the claimant sustained multiple and grievous injuries all over the body, right leg foot cut injury 10 stitches made and head. Immediately, he was taken to Government Hospital, Perambalur and then referred to Annai Hospital, Perambalur where he was treated as in-patient for 2 weeks and 10 stitches were made on the foot and thereafter he took treatment in a private hospital. Now he is taking treatment as in-patient privately.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.70,000/- with interest at 7.5% per annum.

4. On the side of the appellant/claimant, P.W1 and P.W.2 have been examined and Exhibits P1 to P9 were marked. No oral or documentary evidence was adduced on the side of the 2nd respondent. The 1st respondent was called absent and set exparte before the Tribunal.

5. Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent offending vehicle and on re-appreciation of evidence, the said finding is hereby confirmed.

6. Not satisfied with the amount of compensation, the claimant has preferred this appeal.

7. The learned counsel for the appellant/claimant has submitted that the Doctor Saravanan was examined as P.W.2. He perused the Accident Register copy and Wound Certificate issued by the Government Hospital, Perambalur and examined him. He took X-ray also which is marked Exhibit P8. He suffered grievous injury on his right leg. He had underwent surgery on his right leg knee and has fixed a plate screw and now united. The moving capacity of hip is reduced to 40% and turning capacity is also reduced to 10%. He complaint of pain. P.W.2 Doctor Saravanan has given treatment in his hospital at Perambalur. Exhibit P4 is the discharge summary issued by the Annai Hospital, Perambalur. So the claimant could not squat, sit, stand, walk for along distance, climb staircase etc. Therefore, the Doctor assessed 40% disability.

8. Heard both sides and perused the materials available on record.

9. After hearing both sides and taking note of the fact that the Medical Bills Exhibits P.9, Exhibit P7 Disability Certificate and also the evidence of the Doctor P.W.2 Saravanan, the "disability" has been fixed at 40% (Rs.1000/- per 1% of disability) and accordingly Rs.40,000/- has been awarded by the Tribunal.

10. Taking into consideration the disability suffered by the claimant, this Court enhances the 'disability' and accordingly, awards an amount of Rs.60,000/- (40%*Rs.1500/-). For attender charges, it is seen that there is no award for the same by the Tribunal. However, after going through Exhibit P4 Discharge summary, in the interest of justice, Rs.5,000/- is hereby awarded for "attender charges".

11. Further, the Medical Bills have been produced as per Exhibits P9 and the Tribunal awarded Rs.20,000/- for medical expenses. This Court, considering the medical bills produced, is of the view that Rs.28,500/- shall be awarded for the "medical expenses". Further, under the head of "pain and suffering", it has been enhanced to Rs.7,000/- from Rs.5,000/- and with regard to "nutritious diet", it has been enhanced to Rs.7,000/- from Rs.5,000/-. Since, there is no award under the heads 'transport expenses', and 'loss of amenities', this Court awards a sum of Rs.5,000/- and Rs.7,000/- towards the same. Hence, total compensation is hereby enhanced to Rs.1,19,500/- from Rs.70,000/- as awarded by the Motor Accidents Tribunal and hence, the award amount in M.C.O.P.No.491 of 2007 stands modified as that of Rs.1,19,500/-. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Disability	Rs. 40,000/-	Rs. 60,000/-
Medical expenses	Rs. 20,000/-	Rs. 28,500/-
Painand sufferings	Rs. 5,000/-	Rs. 7,000/-
Nutritious Diet	Rs. 5,000/-	Rs. 7,000/-
Attender charges	-----	Rs. 5,000/-
Transport expenses	-----	Rs. 5,000/-
Loss of amenities	-----	Rs. 7,000/-
Total	Rs. 70,000/-	Rs. 1,19,500/-

12. The learned counsel for the second respondent/Insurance Company stated that the entire award amount has already been deposited and the second respondent/Insurance Company shall deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this judgment. Interest at the rate of 7.5% with regard to the enhancement of amounts shall accordingly be calculated for payment.

13. With the above enhancement in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly-allowed. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal (District Judge),
Perambalur.
2. The Section Officer,
V.R.Section, High Court, Chennai.

+1cc to Mr.C.Vidhusan, Advocate sr.26446

+1cc to Mr.s.Manohar, Advocate sr.26739

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C.M.A.No.390 of 2009

ad(co)
nr 15/05/2019

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