

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1364 of 2013

Ganesh

...Appellant/Petitioner

vs.

1.M.Annaiyan

2.United India Insurance Co. Ltd.,
Divisional Office - I,
104/A, Peramanur main road,
Salem-7.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.07.2011 passed in MCOP.No.550 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.2, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondent : Mrs.I.Malar for R2

: R1- EXparte

J U D G M E N T

The appellant is the claimant in MCOP.No.550 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.2, Salem. 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 15.01.2007.

2. The case of the claimant is that on 15.01.2007, he was walking along Yerkadu main road near Sivalingam Hospital and at about 05.30 pm, a speeding auto bearing Registration No. TN 30 E 7582 hit him, as a result of which, he sustained injuries all over his body.

3. According to the claimant, the rash and negligent driving of the driver of the auto belonging to the first respondent was the cause of the accident and that since the said auto was

insured with the United India Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the auto remained absent before the Tribunal and therefore he was set exparte. The second respondent / United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional District Judge / Motor Accident Claims Tribunal, Fast Track Court No.2, Salem while awarding a compensation of Rs.28,000/- together with interest at the rate of 7.5% per annum to the claimant, directed the Insurance Company to pay the compensation amount in the first instance and then recover the same from the owner of the auto, since the driver of the auto drove the vehicle under the influence of alcohol. 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.

5. Mr.K.Kuppusamy, learned counsel appearing for the appellant/ claimant contended that the Tribunal awarded a meagre amount of Rs.28,000/-, especially when Dr.Selva Kalanchiyam (PW2) has assessed the partial permanent disability as 25%. He therefore, prayed for enhancement of compensation.

6. Per Contra, Mrs.I.Malar learned counsel appearing for the second respondent / United India Insurance Company contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.28,000/- together with interest at the rate of 7.5% per annum and the same need not be disturbed at this stage.

7. A perusal of the orders passed by the Tribunal shows that the Tribunal merely based on the copy of the FIR (Ex.P1) had concluded that the driver of the auto was under the influence of alcohol on the date of the accident. It is pertinent to point out that the final report filed by the Police has not been adduced by the second respondent / United India Insurance Company. There is no medical evidence to show that the driver of the auto was under the influence of alcohol, at the time of the accident and in the absence of any evidence, the Tribunal was wrong in holding that the driver of the auto had consumed alcohol, merely based on the FIR lodged by the father of the claimant. In the facts and circumstances, the orders passed by the Tribunal directing the Insurance Company to pay the compensation in the first instance and then recover the same from the owner of the auto is set aside.

8. Quantum of Compensation: A perusal of the discharge summary (Ex.P3) shows that the claimant sustained a fracture of

temporal bone and Dr.Selva Kalanchiyam (PW2) has assessed the partial permanent disability as 25%. The appellant / claimant was aged 19 years on the date of the accident and in the facts and circumstances, a sum of Rs.50,000/- is awarded towards "partial permanent disability". It is contended in the claim petition that the claimant was studying in ITI and was also employed in a Hotel at Yercaud, earning a sum of Rs.4,000/- per month. On account of the accident he would not have been in a position to attend to his regular work atleast for 3 months and therefore, a sum of Rs.12,000/- (Rs.4,000/- x 3 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.50,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.12,000/-
8.	Medical bills	Rs.2,000/-
Total		Rs.96,500/-

9. 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.28,000/- to Rs.96,500/-, which would carry interest at the rate of 7.5% per annum.

(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 second respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.96,500/- (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 MCOP.No.550 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.2, Salem 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Additional District Judge,
Fast Track Court No.2, Salem.

2.VR Section,
High Court of Madras,
Chennai.

+1 CC to Mr.K.Kuppusamy, Advocate sr 94841.

CMA.No.1364 of 2013

NR(CO)
SP(08/09/2020)



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