

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No. 649 of 2009

S. Vasudevan

.... Appellant/Petitioner

Vs.

1. Y. Ravi

2. The Oriental Insurance Co.Ltd.,
CBO-II, 1/1, Connught Road Cross,
Bangalore - 560 052. Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 16.06.2008 made in MCOP No.413 of 2005 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Salem.

For Appellant : Mr.C. Kulanthaivel
Respondents : Mr. J. Chandran for R-2
R-1 Not ready notice.

J U D G M E N T

This appeal is preferred by the appellant/claimant challenging the judgment and decree dated 16.06.2008 passed in M.C.O.P. No. 413 of 2005 on the file of the Motor Accident Claims Tribunal-cum-Principal Sub Judge, Salem.

2. It was the case of the claimant before the Tribunal that on 21.01.2005 at about 12'o clock midnight, the claimant/appellant was driving his Maruthi Car bearing Registration Number TN-23-F1225 on Krishnagiri to Hosur Main Road and when the Car was nearing Ananth Electronics, Hosur, a lorry bearing Registration No. TAN 1333 came from opposite direction with great speed and dashed against the claimant's vehicle. As a result of that, the claimant was sustained severe head injury and immediately he was taken to the Government Hospital, Hosur and subsequently, he was shifted to Manipal Hospital, Bangalore. It is further stated that the accident had happened due to rash and negligent act of the lorry driver, the claimant has preferred the petition before the claims Tribunal

as against the owner and insurer of the lorry. The claim was resisted by the insurance company/insurer/second respondent herein before the Tribunal denying the averments made in the claim petition by the claimant.

3. The Tribunal, based on the materials and documents adduced by both sides has held that the accident had happened only on account of negligent driving by the lorry driver and since the insurance policy was in force, directed the insurer/insurance company to pay the compensation on behalf of the insured. The Tribunal has also quantified the detail compensation at Rs.1,35,000/- payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over which, the claimant is before this Court seeking enhancement.

4. Heard both sides.

5. The learned counsel for the appellant/claimant submitted that the claimant is not in dispute the negligence aspect, but only the disputing the quantum. He further submitted that the award passed under all heads are too low, more particularly under the heads disability, loss of amenities and discomfort and loss of income.

6. Per contra, the learned counsel for the second respondent submitted that the Tribunal has taken into consideration all the aspects and has awarded the compensation at Rs.1,35,000/-. He further submitted that the Tribunal has appreciated the documents and has awarded the compensation which does not require any interference at the hands of this Court.

7. A perusal of the wound certificate and the accident register extract Exs.A2 and A3 would reveal that due to the accident, the claimant sustained multiple fracture in his ribs and he took treatment at Manipal hospital, Bangalaoe. Further, as per Ex.P21, disability certificate, the Doctor, PW.3, who certified the same had stated that even after the surgery, the claimant is unable to work because of the discomfort in his ribs as well as left shoulder. The Doctor has also stated that implant has been done and plats have been fixed on the claimant. From the above evidence and documents, it is clear that the loss of amenities & discomfort and the disability suffered by the claimant is on the high. The Tribunal without regime or reason has taken the disability at 25% instead of at 38.5% has arisen by the Doctor, PW.3.

8. This Court is of the view that the Tribunal went wrong in taking the same at 25% and the Tribunal has taken Rs.1,800/- per percentage of the disability, which is also incorrect. Since as

per the settled principles of law at Rs.2,000/- per percentage of the disability is the right amount to be taken in the claimant, since the accident was of the year 2005. Further, towards the loss of income, the Tribunal has awarded a sum of Rs.15,000/-, which is against the materials on record. Since as per Ex.P18, Salary certificate, the claimant was earning more than Rs.15,000/-, apart from his part time Naturopathy work.

9. In view of the above reasonings, the award passed by the Tribunal needs significant increased. Hence, the amount awarded under the head of disability is enhanced to Rs.77,000/- (Rs.2,000x38.5%), for loss of amenities and discomforts amount granted is Rs.35,000/- and loss of income is enhanced to Rs.25,000/-. The amount awarded towards pain and sufferings, medical expenses, nutrition and transport expenses and future medical expenses as per PW.3 at Rs.15,000/-, Rs.30,000/-, Rs.10,000/- and Rs.20,000/- are reasonable and hence, the same is confirmed as such.

10. The breakup details of the restructured compensation are thus:-

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Pain and sufferings	15,000/-	15,000/-	Confirmed
2	Medical bills	30,000/-	30,000/-	Confirmed
3	Nutrition & transport	10,000/-	10,000/-	Confirmed
4	Loss of one month income	15,000/-	25,000/-	Enhanced
5	Disability at 38.5% (Rs.2,000 x 38.5%)	45,000/-	77,000/-	Enhanced
6	Future medical expenses	20,000/-	20,000/-	Confirmed
7	Loss of amenities and discomfort	-	35,000/-	Granted
	Total	1,35,000/-	2,12,000/-	Enhanced by 77,000/-

11. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed by enhancing the total compensation from Rs.1,35,000/- to Rs.2,12,000/-, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Needless to state that the appellant/claimant is not entitled to receive any interest for the condonation of delay period, if any. The second respondent is directed to deposit the enhanced amount as ordered by this Court within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any. The appellant/claimant shall pay the necessary Court fee for enhanced compensation amount before receiving the copy of this judgment. On such deposit being made by the second respondent, the Tribunal shall transfer the total amount to the Savings Bank account of the appellant through RTGS within a period of one week thereafter. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kv

To

1. The Motor Accident Claims Tribunal cum Principal Sub Judge, Salem.
2. The Section Officer,
V.R. Section
High Court, Madras.

+1 CC to Mr.C. Kulanthaivel, Advocate sr 102845.
+1 Cc to Mr.J. Chandran, Advocate sr 103334.

C.M.A.No. 649 of 2009

WEB COPY

MP(CO)
SP(13/08/2020)