

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.1484 of 2015

S.Murugan@Thangaiaj ... Appellant/Claimant
Vs.

- 1.Tarapore and Company, (Ex-parte)
Dhum Building,
No.827, Anna Salai
Chennai-600 002.
(R1 Ex-parte before Tribunal)
2. National Insurance Company Limited
Divisional Office No.III,
No.751, II Floor,
Anna Salai,
Chennai-600 002. ... Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.03.2012 and made in M.A.C.T.O.P.No.3680/2011 on the file of the Motor Accident Claims Tribunal (In the Court of V Court of Small Causes, Chennai).

For Appellant : Mr.A.Subadra
for M/s.M.Akila
For Respondents : Mr.J.Chandran for R2.
R1-Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.3680 of 2011, dated 27.03.2012, on the file of the Motor Accidents Claims Tribunal (In the Court of V Court of Small Causes) Chennai.

2. The appellant herein, who is the claimant, has filed M.C.O.P.No.3680 of 2011, on the file of the Motor Accidents Claims Tribunal(In the Court of V Court of Small Causes) Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in a road accident that took place on 28.10.05 at about 19.00 hrs, when the petitioner was repairing the lorry at Velacherry main Road at the extreme left of the road, the another lorry bearing Reg.No.TN 01 R 1034 owned by the 1st respondent and insured with the 2nd respondent vide policy No.5000600/31/04/6311033 valid from 24.12.04 to 23.12.05(policy number amended as per order in M.F.No.124/12 dated 09.01.12) being driven by its

driver in a rash and negligent manner, dashed against the petitioner, due to which he sustained injuries. The first respondent is the owner of the offending vehicle and the said vehicle was insured with the second respondent/National Insurance Company at the time of accident.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent/Tarapore & Company and directed the first respondent/Tarapore & Company and Second respondent/The National Insurance Company Limited to pay the compensation for a sum of Rs.2,50,000/- to the claimant.

4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

- (a)Ex.P1 : Copy of FIR
- (b)Ex.P2 : Copy of Charge Sheet
- (c)Ex.P3 : Discharge Summary
- (d)Ex.P4 : Discharge Summary
- (e)Ex.P5 : Discharge Summary
- (f)Ex.P6 : Photographs
- (g)Ex.P7 : Disability Certificate issued by P.W.2
- (h)Ex.P8 : X-ray Film

On the side of the respondents, none were examined and no exhibits were marked.

5. Aggrieved by the award, the claimant has filed the present appeal for enhancement.

6. The learned counsel for the petitioner submitted that the Tribunal erred in awarding a sum of Rs.2,50,000/- as against the total claim of Rs.6,00,000/-. The Tribunal failed to consider the evidence of P.W.1 and P.W.2, the Doctor and the documents marked through them and awarded only Rs.2,50,000/- as compensation. The doctor has assessed the disability as 45% and the same was fixed as 40% by the tribunal. The injured has sustained extensive crush injuries in his right foot with degloving injury sole of foot dorsails pedis artery-lisfrac dislocation right, lis franc fracture type with fracture dislocation and K wire fixation and had undergone surgery. It is further contended that the Tribunal has not considered the nature of injuries sustained by the injured and the injured lost his 100% loss of earning capacity.

7. The learned counsel appearing for the second respondent/National Insurance Company contended that the accident occurred only due to the rash and negligent driving of the 1st respondent. Further, his grievance is that the driver of the Lorry bearing Regn.No.TN-01-R-1034 was not holding a valid and effective driving license at the time of

the accident. The learned counsel denies all the allegations raised by the claimant. The Tribunal has erroneously awarded a sum of Rs.2,50,000/-.

8. On perusal of records it is seen that the particulars have been furnished by the claimant regarding the age, income and occupation of the injured and the same was taken into consideration by the Tribunal. The injured was aged about 25 years at the time of accident and he was working as a Cleaner in Ranjith Water Supply, Mambakkam, Chennai and earning Rs.6000/- per month. Based on the evidence on record, the injuries sustained by the petitioner, the Tribunal fixed the disability at 40%. The Tribunal fixed the compensation for disability the rate of Rs.2,000/- per percentage and awarded a sum of Rs.80,000/-. This Court inclined to fix the disability at Rs.2,000/- per percentage and thereby enhancing the disability at 45%, and awarded Rs.90,000/- (Rs.2000/- x 45%=Rs.90,000/-). The Tribunal has fixed the loss of income (Rs.4,500/- per month) for 4 months and awarded Rs.18,000/- for loss of income. But this Court is of the view that definitely the injured would have not attended his work for atleast six months, therefore considering the nature of injuries sustained by him, the sum awarded under the head loss of income is enhanced at Rs.27,000/-. The Tribunal has awarded a sum of Rs.6,000/- towards Transport and the same is enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.6,000/- towards Extra Nourishment and the same is reduced to Rs.5,000/-. The Tribunal has awarded a sum of Rs.50,00/- towards pain and suffering and the same is enhanced to Rs.75,000/-. The Tribunal has awarded a sum of Rs.16,000/- towards attender charges, Rs.1,000/- towards damages, Rs.20,000/- towards loss of amenities, Rs.3,000/- towards medical expenses, Rs.50,000/- towards loss of earning capacity are confirmed by this Court. Thus, the compensation awarded by the Tribunal is modified as follows:

9. Hence the total compensation payable to the claimant is as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Disability at 40% at the rate of Rs.2,000/- per percentage	Rs.80,000/-	Rs.90,000/-
2.	Loss of Income	Rs.18,000/-	Rs.27,000/-
3.	Transport	Rs.6,000/-	Rs.10,000/-
4.	Extra Nourishment	Rs.6,000/-	Rs.5,000/-
5.	Damages	Rs.1,000/-	Rs.1,000/-

6.	Attender Charges	Rs.16,000/-	Rs.16,000/-
7.	Loss of amenities	Rs.20,000/-	Rs.20,000/-
8.	Medical Expenses	Rs.3,000/-	Rs.3,000/-
9.	Pain and Suffering	Rs.50,000/-	Rs.75,000/-
10.	Loss of Partial earning capacity	Rs.50,000/-	Rs.50,000/-
	Total	Rs.2,50,000/-	Rs.2,97,000/-

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.2,50,000/- is enhanced to Rs.2,97,000/-. Both 1st and 2nd respondents are directed to deposit the entire amount awarded by this Court along with interest and costs jointly and severally before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The V Judge,
Small Causes Court,
Motor Accident Claims Tribunal
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to M/s.M.Akila , Advocate SR.No. 50744

+lcc to Mr.J.Chandran , Advocate SR.No. 50556

C.M.A.No.1484 of 2015

A.SK(27/07/2020)