

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1567 of 2015

K.Karuppanan

... Appellant/Petitioner

Vs.

1.Ashokan

(Notice to the first respondent may be dispensed with for the time being since he was set exparte before the Tribunal)

2.M/s. National Insurance Company Limited,
Branch Office, 88F, Bye Pass Road,
Dharmapuri Taluk and District. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment made in M.C.O.P.No.805 of 2008 dated 27.11.2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : M/s.C.Kulanthaivel

For R1 : Ex-parte

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by claimant against the judgment and decree made in M.C.O.P.No.805 of 2008, dated 27.11.2014, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2. The claimant/injured is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

3. The brief case leading to the claim application is as follows:

On 15.09.2008, at about 2.00 PM., when the appellant herein was driving his TVS 50 XL moped bearing Registration No.TN-27-F-7905 from Konganapuram to Nachangkadu near Bambaikarkan Thottam, Morambukkadu, the driver of the tempo bearing Registration No. TN-29-C-9806, drove it in a rash and negligent manner and hit against the petitioner vehicle and

due to which, the appellant herein sustained multiple injuries all over his body. Immediately he was taken to LKM Hospital, Erode and thereafter shifted to Ganga Medical Centre and Hospital, Coimbatore for further treatment and incurred heavy medical expenses and also undergone pain and suffering and therefore claimed Rs.10,00,000/- as compensation under various heads.

4. The second respondent/Transport Corporation simply denied the mode of accident by stating that the accident is only an unexpected event and there is no rash and negligence driving on the part of the driver of the tempo viz., S.Vijayananth. Further, he denied the sum claimed by the claimant/appellant herein for medical expenses and other related heads.

5. The Tribunal, after perusing the documents both oral and evidence placed before it, has given its finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the tempo and directed the second respondent herein/Insurance Company to pay the compensation. The sum awarded by the Tribunal under various heads is as follows:

Sl.No.	Heads	Amount Awarded by the Tribunal
1.	Disability	1,00,000.00
2.	Pain and sufferings	30,000.00
3.	Loss of income during the treatment	27,000.00
4.	Medical Bills	59,000.00
5.	Extra Nutrition	5,000.00
6.	Transport	5,000.00
7.	Total	2,26,000.00
	Petitioners entitle amount (after deduction of 10%)	2,03,400.00

6. The appellant herein is very much aggrieved against the award made by the Tribunal at Rs.2,03,400/- against the claim of Rs.10,00,000/- and the contributory negligence determined by the Tribunal on the part of the injured at 10%. It is submitted that when there is a clear evidence by way of FIR as well as the charge sheet that negligence was only on the part of the driver of the first respondent vehicle and further the driver of the said vehicle also admitted negligence and paid fine, contributory negligence fixed on the injured, cannot be said to be proper.

7. As far as the injuries sustained by the appellant is concerned, it is evident that he suffered amputation of left leg below the knee level. Therefore, the Tribunal,

considering the nature of injuries, disability, pain and suffering, loss of income, loss of amenities, awarded altogether Rs.2,26,000.00 under various heads, which according to the appellant is not a just compensation, but, on the meagre side. It is contended that the specific medical evidence was not considered by the Tribunal; loss of future prospects, future medical expenses, ought to have been taken note of. Further, discomfort of the appellant/claimant throughout his entire life has not properly taken note of by the Tribunal. Hence, the appellant sought for enhancement of compensation under various heads and to set aside the apportionment of negligence fixed at 10% on the appellant/injured.

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

9. As far as negligence is concerned, the Tribunal after going through the entire evidence found that the injured/appellant did not possess any valid driving licence at the time of the accident. But it is also observed that due to the rash and negligent driving on the part of the driver of the first respondent vehicle only, the Accident occurred. The driver of the said vehicle also admitted his offence and paid fine. In such circumstances, the observation made by the Tribunal by fixing 10% disability for non-possession of the driving license on the part of the injured is not proper. Hence, the finding of the Tribunal in that aspect is set aside.

10. The admitted evidence is that the injured sustained amputation of left leg below knee level. However, the Tribunal awarded Rs.2,000/- per percentage of disability. PW2/Dr.Krishnasamy has clearly deposed his evidence before the Tribunal that the petitioner sustained 50% permanent disability vide disability certificate Ex.P14.

11. The appellant/injured was earning a sum of Rs.15,000/- per month through self employment by engaging himself as agriculturist as well as cotton merchant. In this regard, the income taken by the Tribunal was Rs.4,500/-, which needs to be modified by this court. Hence, this Court takes Rs.7,500/- as monthly income. At the time of accident, the injured was 65 years old, he could do his agricultural activity, for 5 more years, i.e., upto the age of 70. But due to the accident, he could not carry out his agricultural and merchant activity. Hence, the tribunal, taking into account the permanent disability of 50% and 5 years of earning capacity, calculated the loss of income. Keeping in mind the same, this court, with the modified monthly income calculates the loss of income, as under:-

$$\text{Rs.7,500/-} \times 12 \times 50\% \times 5 = \text{Rs.2,25,000/-}$$

12. Since the appellant suffered amputation, he would have undergone severe pain and suffering and hence, under the said head, necessarily compensation has to be enhanced. Consequently, the compensation awarded under medical expenses, nourishment, transportation also have to be reasonably modified. Further, finding that no compensation is awarded under the heads "Future Medical expenses, Attender Charges, Loss of amenities", no sum is awarded by the Tribunal, this court awards reasonable sum under those heads as under:-

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income	...	2,25,000.00
1.	Disability	1,00,000.00	...
2.	Pain and sufferings	30,000.00	50,000.00
3.	Loss of income during the treatment	27,000.00	7,500x6 = 45,000.00
4.	Medical Bills	59,000.00	59,000.00
5.	Extra Nutrition	5,000.00	10,000.00
6.	Transport	5,000.00	10,000.00
7.	Attender charges	...	25,000.00
8.	Loss of amenities	...	25,000.00
9.	Future medical/artificial limp	...	50,000.00
10.	Total	2,26,000.00	4,99,000.00
	Claimants entitle for amount (after deduction of 10)	2,03,400.00	-

Hence, the compensation awarded by the Tribunal is enhanced from Rs.2,03,400/- to Rs.4,99,000/-.

12. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,03,400/- to Rs.4,99,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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

(iv)The second respondent/ National Insurance Company Limited, is directed to deposit the entire amount, awarded by this Court along with interest and costs 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. On such deposit being made, the Tribunal shall transfer the amount to the appellant/claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
Sub Court,
Sankari.

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.77850

+1cc to Mr.D.Bhaskaran, Advocate SR.No.77944

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C.M.A.No.1567 of 2015

RV(CO)

GMV(21/02/2020)

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