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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :18.02.2019

JUDGMENT PRONOUNCED ON:08.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.NO.2075 OF 2011

Vasudevan

...Appellant/
Petitioner

Vs.

1. Balagopal
(R1 remained exparte before the Tribunal)

2. The Branch Manager,
The Oriental Insurance Co.Limited,
No.75, Krishnan street,
Thiruvannamalai.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.08.2010, in M.C.O.P.No. 674 of 2006, on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Judge), Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R1 : Exparte before the Tribunal

For R2 : Mr.R.Sivakumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 674 of 2006, on the file of the Motor Accidents Claims Tribunal, the Additional Sub-Judge, Thiruvannamalai. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 22.06.2005.



2. The brief case of the appellant/claimant is as follows:-

(i) The appellant/claimant was aged 20 years on the date of the accident. He was working at Parvathy water services, Thiruvannamalai and earning a sum of Rs.3,000/- per month.

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(ii) On 22.06.2005, at about 3.00 pm., the appellant/claimant was walking opposite Parvathi Water Service on Bye pass Road in Thiruvannamalai Town. At that time, the driver of the Yamaha motorcycle bearing Registration No.TN 23 E 4646, drove the vehicle in a rash and negligent manner and dashed against the claimant. Due to the said accident, the appellant/claimant sustained (i) fracture on his right leg knee , (ii) fracture on his right hand knee and injuries all over the body.

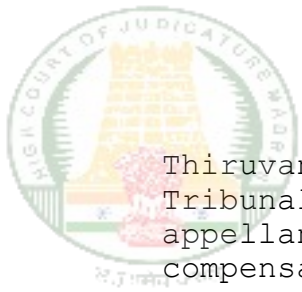
(iii) Immediately after the accident, the appellant/ claimant was taken to Government Hospital, Thiruvannamalai. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The owner of the Yamaha motorcycle bearing Registration No.TN 23 E 4646, was absent before the Tribunal, and therefore, he was set ex-parte. The Oriental India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.P1 to Ex.P8 were marked. On the side of the respondents, Assistant from the 2nd respondent's Insurance Company was examined as RW1 and Investigation Report is marked as Exhibit R1 and true copy of the Insurance Policy is marked as Exhibit R2.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.1,00,000/- as compensation together with interest at the rate of 7.5% per annum and directed the first and second respondents to jointly and severally pay the said compensation to the appellant/claimant. Not 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. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence driving fixed on the part of the rider of the said motorcycle, is not in dispute and the same is hereby confirmed.

6. The learned counsel appearing for the appellant/ claimant would contend that, in the above said accident, the appellant/claimant has suffered (i) fracture on his right leg knee , (ii) fracture on his right hand knee and injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital,



Thiruvannamalai from 23.06.2005 to 29.06.2005. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

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7. The learned counsel appearing for the second respondent/Oriental Insurance Company Limited would contend that as per the investigation report of the investigator, the claimant Vasudevan suddenly crossed the road without noticing the oncoming Yamaha motorcycle and the claimant himself dashed against the motorcycle. Hence, the second respondent/Insurance Company states that the fault lies on the part of the claimant and there is no fault on the part of the driver who drove the motor-cylce. The accused Yamaha motorcycle driver had only a learner's licence at the time of alleged accident. Hence, the second respondent/Insurance Company is not liable to pay any compensation to the claimant.

8. Based upon the oral and documentary evidence, the Tribunal has rejected the contention of the Insurance Company that the claimant has cross the road in a negligent manner and thereby, he has contributed to the negligence.

9. On a perusal of the oral and documentary evidence, particularly P.W.1 and also taking note of the fact that the F.I.R was registered against the driver of the Yamaha vehicle belonging to the first respondent and also the Motor Vehicle Report under Exhibit P2 and accident register under Exhibit P3, charge sheet under Exhibit P4 and further, the rider of the Yamaha motorcycle has also pleaded not guilty and paid fine as seen from Exhibit P5, the finding of the Tribunal that the rider of the motorcycle (Yamaha) owned by the first respondent was rash and negligent and contention of the first respondent-Insurance Company that he has not contributed to the accident is hereby negatived and finding arrived by the Tribunal fixing the rash and negligence on the part of the driver of the motorcycle, is hereby confirmed.

10. On the point of quantum of compensation, based upon the medical evidence of P.W.2 Doctor that there was a surgery on the right leg of the claimant boy aged about 20 years and other injuries as reflected under Exhibit P6 discharge summary, the Tribunal, taking into consideration, Exhibit P3 accident register and Exhibit P6 discharge summary, coupled with the oral evidence of P.W.2 regarding the surgery and aftermath of the surgery and P.W.2 Doctor having found the malunion of the bones and also the difficulty in the movement and restriction and the rotation, the Doctor has assessed the disability at 40% under Exhibit P7 disability certificate and the Tribunal has taken into consideration of both oral and documentary evidence and



arrived partial permanent disability at 40% and accordingly, based on calculated at Rs.2,000/- per percentage of disability awarded Rs.80,000/-(40%x2000) and the same is hereby confirmed.

11. Since the appellant/claimant was admitted as an in-patient from 23.06.2005 to 29.06.2005 in Government Hospital, Thiruvannamalai and since, he had also underwent a surgery, the sum of Rs.10,000/- and Rs.2,000/- granted by the Tribunal under the heads 'pain and sufferings' and 'extra nourishment' is hereby enhanced to Rs.20,000/- and Rs.6,000/- respectively. A sum of Rs.3,000/- granted by the Tribunal under the head 'transportation' is hereby enhanced to Rs.6,000/-. Since the appellant/claimant was admitted as an inpatient for 7 days, a sum of Rs.2,000/- granted by the Tribunal towards the 'attender's charges' is hereby enhanced to Rs.6,000/. With regard to 'loss of income', the Tribunal awarded Rs.3,000/- per month for a period of 1 month and the same is re-assessed at Rs.6,000/- per mensem for a period of two months and accordingly, Rs.6,000/- is awarded under the same. The Tribunal has not granted any amount towards 'loss of amenities' and therefore, a sum of Rs.8,000/- is awarded towards the same.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 226 of 2009 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs. 80,000/-	Rs. 80,000/-
2.	Loss of income	Rs. 3,000/-	Rs. 6,000/-
3.	Transportation	Rs. 3,000/-	Rs. 6,000/-
4.	Extra nourishment	Rs. 2,000/-	Rs. 6,000/-
5.	Loss of amenities	NIL	Rs. 8,000/-
6.	Pain and sufferings	Rs. 10,000/-	Rs. 20,000/-
7.	Attender's charges	Rs. 2,000/-	Rs. 6,000/-
	Total	Rs.1,00,000/-	Rs.1,32,000/-

The compensation awarded by the Tribunal is enhanced from Rs.1,00,000/- to Rs.1,32,000/- which shall carry interest at the rate of 7.5% per annum.

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.



(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,00,000/- to Rs.1,32,000/-.

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

(iv) The second respondent/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.1,32,000/- (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 M.C.O.P.No. 674 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional Sub-Judge, Thiruvannamalai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Additional Sub-Judge,
Thiruvannamalai.

2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.34170

+1cc to Mr.R.Sivakumar , Advocate, S.R.No.34183

C.M.A.No.2075 of 2011

NMI (CO)
CS/19/11/2019