

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2019

Pronounced on : 06 .09.2019

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.383 of 2019

S.N. Jayabalan ... Appellant/Claimant

Versus

- 1. R. Vellingiri
-
- 2. Sri Vinayakar Textiles,
Velayadhampalayam Pellapalayam post,
Mangalam Via Semannur.
- 3. The United India Insurance Co.Ltd.,
Bank of Baroda Building,
4th Floor State Bank Road,
Coimbatore. ... Respondents/Defendants

Prayer: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to modify the order of Judgment and Decree made in M.C.O.P.No. 805 of 1997 dated 19.05.2003 on the file of the Additional District Court (Fast Track Court V), Coimbatore.

For Appellant :Mr.A.E. Ravichandran

For Respondent-3 :Mrs.I. Malar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant seeking to modify the compensation granted by the Tribunal in the award dated 19.05.2003 made in M.C.O.P.No.805 of 1997 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court-V, Tiruppur.

2. The appellant is the claimant who is aggrieved against the award made by the Tribunal at Rs.1,15,290/- against the claim of Rs.4,00,000/-.

3. The Brief facts of the case is as follows:

On 24.01.1995 at about 4:30 p.m when the appellant, who is the participant in the cycle rally, was proceeding in his bicycle near Jeeva Nagar, a van bearing Registration Number : TN-39-B-7071 driven by the first respondent hit the claimant, thereby he sustained grievous injuries all over his body. Immediately he was taken to Government Head Quarters Hospital, Tiruppur and later on he was taken to KMCH, Coimbatore and admitted as in-patient. Hence, he filed a claim petition before the Tribunal.

4. The 3rd respondent/insurance company denied the mode of accident as stated by the claimant in the claim petition. In the cycle rally conducted on 24.01.1995 there was no accident occurred and the claimant has not sustained any injuries as stated in the claim petition and the accident has occurred only due to the negligent attitude of the claimant. Apart from that, the sum claimed by the claimant under various heads, with respect to the nature of injuries sustained are also very excessive without any basis and proof.

5. The Tribunal upon consideration of the evidence available on record, has awarded a total compensation of Rs.1,15,290/- with interest at the rate of 7.5% per annum from the date of petition, to the respondent/claimant. Aggrieved against the same, the claimant has preferred this appeal to set aside the same.

6. In the grounds of appeal the appellant had stated that he was working as line-man in the Telephone Department, due to the injuries sustained in the accident he is not able to attend his work and the Tribunal failed to award any amount towards loss of income, since, he could not able to attend his duty from 24.01.1995 to 24.06.1995. Even though the Doctor assessed disability at 22%, the Tribunal went wrong in granting a very low compensation for the head permanent disability, which needs interference by this Court. The further grounds raised by the appellant is that immediately he was taken to Government Head Quarters Hospital, Tiruppur and later on he was taken to KMCH, Coimbatore and admitted as in-patient. Hence, the appellant contended that he incurred huge loss of income, pain and sufferings and medical expenses which was not properly awarded by the Tribunal.

7. Heard Mr.A.E.Ravichandran, learned counsel for the appellant and Mrs.I.Malar, learned counsel for the 3rd respondent and perused all the materials available on record.

8. On perusal of the records it is seen that the Tribunal after analyzing the evidence and documents has given a finding that the first respondent driver is responsible for the accident and the Tribunal has also observed the nature of injuries sustained by the claimant and awarded compensation for a sum of Rs.1,15,219/- by considering the evidence of P.W.2/Doctor who assessed disability at 22%. The appellant/claimant is very much aggrieved that due to the said accident the claimant sustained fracture in his right leg and to set right the fractures, plates have been fixed and plated screws and nails were fixed and as stated in the grounds he was not able to attend his duty and he was under treatment for a very long period from 24.01.1995 to 24.06.1995. The appellant has furnished documents ExP.1 to P4 and P.6 to prove the nature of injuries and the treatment underwent by him. Therefore, it is argued by the appellant that the Tribunal has failed to award any amount towards loss of income for the period from 24.01.1995 to 24.06.1995. It is seen from the award that the Tribunal has discussed the deposition of the respondents/claimants who had deposed that even after the accident he was placed under the said department as a permanent employee and he was also receiving the income as line-man and further states that no way in the evidence he placed reliance for his absence to duty for a very long period of time. Further, he has also not placed any relevant proof to substantiate his claim for loss of income during the period of treatment.

9. The Tribunal after considering the assessment by P.W.2/Doctor who assessed 22% disability based on the nature of injuries sustained has awarded a sum of Rs.22,000/- towards disability which is reasonable and proper and does not require any modification. Likewise, the sum awarded under the heads Pain and suffering and medical bills and also other heads are also found reasonable. By considering the injuries suffered by the claimants, this Court is inclined to grant some amount under the heads Attender Charges, Nourishment and Transportation. Accordingly, a sum of Rs.5,000/- is awarded under each of the said heads. Thus, the sum awarded by the Tribunal under various heads is modified is as follows:

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Towards disability	Rs.22,000/-	Rs.22,000/-
2	Pain and sufferings	Rs.5,000/-	Rs.5,000/-
3	Medical Bills	Rs.88,290	Rs.88,290/-
4	Attender Charges	_nil-	Rs.5,000/-

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
5	Nourishment	-Nil-	Rs.5,000/-
5	Transportation	-Nil-	Rs.5,000/-
	Total	Rs.1,15,290/-	Rs.1,30,290/-

10 .In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,15,290/- is hereby enhanced to Rs.1,30,290/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation.

11. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To.

The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Tract Court-V,Coimbatore, Tiruppur.

Copy to

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

+1cc to Mrs.I.Malar, Advocate Sr.77471

+1cc to Mr.A.E.Ravichandran, Advocate Sr.77302

C.M.A.No.383 of 2019

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