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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :25.02.2019

Judgment pronounced on :16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2505 of 2011

Yuvaraja @ Yuvaraja Ram

...Appellant/Petitioner

Vs.

1.K.Sadhasivam

(Given up)

2.The Chairman, SSM College of Arts & Science,

NH-47, Vattamalai, Valyakaranur,
Komarapalayam, Tiruchengode Taluk,
Namakkal District

(Given up)

3.National Insurance Company Limited,

1st Floor, Karthikeya Complex,
403-B10, Mettur Main Road,

Bhavani, Erode District

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.11.2009 in M.C.O.P.No.58 of 2009, on the file of the Motor Accidents Claims Tribunal cum Fast Track Court No.4, Bhavani.

For Appellant : Mr.C.Kulanthaivel

For R1&R2 : Given up

For R3 : Mr.J.Chandran

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 58 of 2009 on the file of the Motor Accidents Claims Tribunal cum Fast Track Court No.4, Bhavani. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 03.11.2008.

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

(i)The appellant/claimant was aged 28 years on the date of accident. He was working as Driver and earning a sum of Rs.4500/- per month.

(ii)



(ii) On 03.11.2008 at about 08.15 a.m., when the appellant/claimant was driving a TATA ACE mini-tempo bearing Registration No.TN 34 E 9832, on Bhavani-Kavindapady main Road on the extreme left side of the road from East to West direction by observing traffic rules and regulations, at that time, the first respondent who drove the bus belonging to the second respondent bearing Registration No.TN 36 F 5757 in a rash and negligent manner without observing traffic rules and regulations on the opposite side from West to East on the main road, without minding the other vehicles/pedestrians on the road, hit against the claimant's mini-tempo. As a result, the claimant was thrown out of the mini-tempo and fell down on the road. Due to the said accident, the appellant/claimant sustained (i) fracture & grievous injuries at both legs (ii) shoulder bones (iii) injuries on fore-head and iv) abrasions and lacerations all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to hospital. The rash and negligent driving of the rider of the above said mini bus was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The first respondent was absent before the Tribunal, and therefore, he was set ex-parte. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, no evidence was adduced. After going through the oral and documentary evidence adduced before it, the Tribunal awarded a sum of Rs.1,45,283/- together with interest at the rate of 7.5% per annum. 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.

4. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence fixed on the part of the driver of the said bus is not in dispute and the same is hereby confirmed.

5. The learned counsel appearing for the appellant/claimant would contend that in the above said accident, the appellant/claimant has suffered (i) fracture & grievous injuries at both legs (ii) shoulder bones (iii) injuries on fore-head and iv) abrasions and lacerations all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Hospital at Kalingarayanpalayam. 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.



6. The learned counsel appearing for the third respondent-National Insurance Company Limited would contend that the appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous and hence, he would contend that the award passed by the Tribunal may be modified. The Insurance Company also disputed the age, avocation and monthly income of the injured claimant before the Tribunal and contended that the quantum of compensation claimed by the injured claimant is highly excessive.

7. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the first respondent's bus owned by the second respondent and insured with the third respondent and accordingly, held that all the respondents before the Tribunal are jointly and severally liable to pay the compensation and in the absence of any evidence on the said finding is hereby confirmed.

8. On the point of quantum, both the parties are heard.

9. Dr.R.Krishnasamy (PW2), who had given Exhibit P17-disability certificate has stated that there is a fracture of both thigh and there is a mal-union and also the steel plate and screws are inside and the claimant cannot bend both legs to a considerable extent as the annual angular movement has been restricted and fixed the disability at 47%.

10. Taking into consideration, the 'disability' fixed by the Doctor, this Court is of the view that a sum of Rs.1,41,000/- may be awarded to the claimant by calculating the amount at Rs.3,000/- per percentage. As the claimant is suffered due to the injuries on his leg, he is entitled to a sum of Rs.40,000/- towards 'pain and sufferings' and accordingly, the sum is hereby awarded. Taking into consideration the fact that he would have lost his nutrition and maintenance, this Court is of the view that an amount of Rs.10,000/- awarded by the Tribunal for 'extra nourishment and maintenance' is justified and the same is hereby confirmed.

11. It is stated that some of the medical bills did not indicate any signature of the person who issued the medical bill. Therefore, this Court reduced the amount of Rs.10,000/- from Rs.64,283/- and accordingly, awards a sum of Rs.58,783/- towards 'medical expenses'. This Court beyond finds it justify and reasonable in respect of the amount of Rs.10,000/- awarded



towards 'transportation charges' and the same is accordingly confirmed.

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12. As the claimant would have lost his amenities, this Court is of the view that awarding an amount of Rs.10,000/- would meet the ends of justice and accordingly, Rs.10,000/- is awarded under the head of 'loss of amenities'. As the person would have attended the claimant in respect of his treatment, this Court is of the view that the amount of Rs.10,000/- shall be awarded towards 'attender charges' and accordingly, the same is awarded.

13. Taking into consideration of the fact that the injuries sustained by the claimant would involve treatment by way of physiotherapy and hence, the amount of Rs.20,000/- is awarded towards 'physiotherapy treatment' and a sum of Rs.5,000/- is awarded for the 'physiotherapist'.

14. Accordingly, the award of the Tribunal in M.C.O.P.No. 58 of 2009 is modified as follows:

Sl.N o.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	permanent disability	Rs. 30,000/-	Rs. 1,41,000/-
2.	pain and sufferings	Rs. 40,000/-	Rs. 40,000/-
3.	Extra nourishment and for maintenance charges	Rs. 10,000/-	Rs. 10,000/-
4.	medical expenses	Rs. 64,283/-	Rs. 58,783/-
5.	Transportation	Rs. 1,000	Rs. 10,000/-
6.	Physiotherapy treatment	-----	Rs. 20,000/-
7.	Physiotherapist	-----	Rs. 5,000/-
8.	Attender charges	-----	Rs. 10,000/-
9.	loss of amenities	-----	Rs. 10,000/-
	Total	Rs. 1,45,283/-	Rs. 3,04,783/-

The compensation awarded by the Tribunal is enhanced from Rs.1,45,283/- to Rs.3,04,783/- which shall carry interest at the rate of 7.5% per annum.

15. 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.1,45,283/- to Rs.3,04,783/-



(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 third respondent/National Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.3,04,783/- (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. 58 of 2009, on the file of the Motor Accidents Claims Tribunal cum Fast Track Court No.4, Bhavani, Erode District within a period of eight weeks from the date of receipt of a copy of this judgment.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Fast Track Court No.4, Bhavani, Erode District.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.C.Kulanthaivel, Advocate Sr.No. 37517
+1 cc to M/s.J.Chandran, Advocate Sr.No. 37816

AKM/05.11.19/5P-5C /

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