

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2103 of 2015

R.Ponnusamy

... Appellant

Vs

1.M.Rajakumaran

(Respondent 1 is given up as he was
set exparte before the Tribunal)

2.New India Assurance Company Limited

Having its office at
No.5, Raja Mill Road,
Pollachi.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.11.2014 made in M.C.O.P.No.270 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Pollachi.

For Appellant : Mr.D.J.Venkatesan

For R2 : Ms.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 24.11.2014 made in M.C.O.P.No.270 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Pollachi.

2.The brief facts is as follows:

On 24.08.2009 at about 4.45 P.M. the petitioner was a pillion rider in Bajaj CT 100 motorcyle bearing Reg.No.TN-38-AL-

3544 which was driven by one Marimuthu from East to West direction on the extreme left side of the Pollachi to Meenkarai Road, when nearing Santhalakshmi Weigh Bridge, Zamin Utukuli at that time a Ape minidor bearing Reg.No.TN-40-X-7642 which was driven by the 1st respondent from opposite west to east direction in a rash and negligent manner, hit against the motorcycle. Due to which, the petitioner thrown out from the motorcycle and fell down on the road, and he has sustained multiple injuries all over the body. Thus the petitioner claimed a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident.

3.The respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the accident was not occurred due to the negligent driving on the part of the 1st respondent, and the same was caused due to the negligence on the part of the petitioner himself, therefore, the Insurance Company is not liable to pay compensation to the petitioner. It is contended that the 1st respondent who is the driver cum owner of the minidor auto bearing Reg.No.TN-40-X-7642 without valid driving licence to drive the auto, driven the auto at the time of accident. The 1st respondent has violated the policy conditions. The 1st respondent loaded the fire wood protruding from the body without following the traffic rules. Further contended that the petitioner has not filed any document to prove the age, income, injuries, disability and loss of income before the Tribunal. The sum claimed by the petitioner is excessive in the absence of any proof.

4.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the auto and awarded a sum of Rs.5,00,590/- and directed both the 1st respondent as well as the 2nd respondent/Insurance Company to pay the compensation to the claimant jointly and severally. The compensation awarded by the Tribunal under the following heads as follows:

Medical expenses	Rs.96,590/-
Permanent disability	Rs.1,80,000/-
Loss of income	Rs.1,62,000/-
Pain and suffering	Rs.50,000/-
Extra nourishment	Rs.10,000/-
Damages to cloth and articles	Rs.2,000/-
Total	Rs.5,00,590/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5. In the grounds of appeal, the appellant has contended that the sum awarded by the Tribunal towards compensation at Rs.5,00,590/- against the claim of Rs.25,00,000/- is very much on the meagre side. The Tribunal has failed to consider the permanent disability of the appellant and awarded low compensation. The Tribunal has erred in not applying multiplier method for fixing the loss of earning power and income due to the permanent disability of 90%. Without considering the nature of injuries sustained by the appellant the Tribunal has awarded a meagre sum as compensation. Due to the said accident the appellant could not even move any where to do his normal work. Therefore, the claimants prayed for enhancement of compensation.

6. Heard Mr.D.J.Venkatesan, learned counsel appearing for the appellant and Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. It is clear from the records that due to the said accident the petitioner sustained fracture in his both hand and fractures in the right leg and hip and also grievous injury on the back side of the head and injuries all over the body. Hence, Ex.P1/FIR was also registered against the 1st respondent. The Tribunal by considering the FIR and also other related documents MVI Report and the evidence of RW1 who is working as a Junior Assistant in the Pollachi Regional Transport Office, fixed the negligence on the part of the driver of the said goods vehicle. Hence, the negligence aspect is fixed on the driver of the said auto which carried over load and also driven the same in a rash and negligent manner and caused the accident. The Tribunal also award a sum of Rs.5,00,590/- under various heads by observing the nature of injuries sustained, medical expenses and disability.

8. On perusal of the records, it is seen that Ex.P2 is the wound certificate, Ex.P10 is the history of treatment issued by the hospital and Ex.P11 discharge summary were marked to substantiate their claim. It is observed that the accident occurred on 24.08.2009, immediately after the accident he was admitted in the hospital. Ex.P2, Ex.P7, Ex.P8, Ex.P9, Ex.P10 and Ex.P11 reveals the fact that the claimant sustained grievous injuries and he was under treatment for a long time and nature of injuries sustained by the appellant is also very much reveal from the said documents. PW2/Doctor examined before the Tribunal

and assessed the disability at 90%. But the Tribunal has taken only 80%. The disability sustained by injured/claimant is very much proved before the Tribunal by filing necessary documents and the Doctor who issued disability certificate also confirms the condition of the injured/claimant that he is totally incapable of maintaining himself and he is in the status that he is always dependent on others through out his life. Hence, this Court considered that it is fit case to grant compensation for disability by adopting proper multiplier method. Accordingly, loss of income is assessed by taking monthly income of Rs.4,500/- and by applying multiplier '16'. Hence, the loss of income awarded by this Court at Rs.8,64,000/- (Rs.4,500/- x 12 x 16). In view of the said enhancement, the sum awarded by the Tribunal towards loss of income and permanent disability are set aside. Considering the longer period of treatment, the attendant charges ought to have been considered, during the prolong treatment and during his life time and he also needs assistance of the attender forever. The Tribunal has not awarded any amount towards attendant charges and transport expenses hence this Court awards a sum of Rs.50,000/- and Rs.20,000/- respectively under those heads. Apart from the above heads, the sum awarded by the Tribunal under other heads are properly considered by the Tribunal and the same are confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Medical expenses	Rs.96,590/-	Rs.96,590/-
2.	Permanent disability	Rs.1,80,000/-	Set aside
3.	Loss of income	Rs.1,62,000/-	Set aside
4.	Loss of income	-	Rs.8,64,000/-
5.	Pain and suffering	Rs.50,000/-	Rs.50,000/-
6.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
7.	Damages to cloths and articles	Rs.2,000/-	Rs.2,000/-
8.	Attendant charges	-	Rs.50,000/-

9.	Transportation charges	-	Rs.20,000/-
	Total	Rs.5,00,590/-	Rs.10,92,590/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,590/- is enhanced to Rs.10,92,590/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, jointly and severally, 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(CS VI)

//True Copy//

Sub Assistant Registrar

mtl
To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Pollachi.

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

+1cc to M/s.R.Sreevidhya, Advocate Sr.66236

C.M.A.No.2103 of 2015

vsn II[co]
srg 02/03/2020