

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3111 of 2011

Palanisamy

...Appellant

Vs.

1.T.Manikandan

2.United India Insurance Co. Ltd.,
Rep. by its Divisional Office - I,
104-A, Peramanoor main road,
Salem-7.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.07.2010, in M.C.O.P.No. 226 of 2009, on the file of the Motor Accidents Claims Tribunal, the Chief Judicial Magistrate, Salem.

For Appellant : Mr.M.Guruprasad

For Respondents : Mr.T.Ravichandran for R2
R1 - exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 226 of 2009, on the file of the Motor Accidents Claims Tribunal, the Chief Judicial Magistrate, Salem. 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 26.12.2008.

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

(i) The appellant/claimant was aged 50 years on the date of the accident. He was working as an accountant in Power loom weaver, earning a sum of Rs.6,000/- per month.

(ii) On 26.12.2008, at about 9.00 pm., the appellant/claimant was riding his bicycle on his side of the VEDIYARASAMPALAYAM main road, near, Soolaimedu temple thirumana mandapam, at that time, a motorcycle bearing Registration No. TN 34 B 1881, ridden by its rider in a rash and negligent manner, came from the opposite direction and

dashed against the appellant/claimant's bicycle. Due to the said accident, the appellant/claimant sustained (i) fracture on his right knee (condyle tibia), (ii) abrasion on his left foot, (iii) abrasion of his left shoulder, (iv) abrasion on his right shoulder, (v) abrasion on left ankle and injuries all over the body.

(iii) Immediately, after the accident, the appellant/claimant was taken to L.K.M. Hospital, Erode. 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. A Criminal Case has been registered against the rider of the above said motorcycle by Pallipalayam police in Crime No. 1226 of 2008 under Section 279 and 337 of I.P.C.

3. The owner of the motorcycle bearing Registration No. TN 34 B 1881, was absent before the Tribunal, and therefore, he was set ex-parte. The United 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.P9 were marked. On the side of the respondents, no evidences were adduced. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.1,26,619/- together with interest at the rate of 7.5% per annum and directed the first and second respondents therein 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.

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

5. The learned counsel appearing for the appellant/claimant would content that, in the above said accident, the appellant/claimant has suffered (i) fracture on right knee, (ii) lacerated left foot, (iii) abrasion over the left shoulder and (iv) injuries all over the body. He would contend that the appellant/claimant was admitted as an inpatient in the L.K.M. Hospital, Erode from 26.12.2008 to 07.01.2009 and has also underwent a surgery on 27.12.2008. 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 United India 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. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable and they need not be disturbed, at this juncture.

7. Dr.Sampathkumar (PW2), had deposed that, after the surgery, the appellant/claimant is unable to stand on his right leg, unable to climb the staircase, unable to squat on the ground floor and there is also a shortening of right leg, for two centimetres. He has also assessed the 'disability' suffered by the appellant/claimant as 36%. However, the Tribunal based on PW1, PW2, wound certificate (Ex.P2) and medical treatment book (Ex.P7), fixed the disability as 25%. The Tribunal in the absence of any evidence to prove the income of the injured, fixed the same as Rs.2,000/- per month and adopted multiplier of 13 to arrive at the compensation and awarded a sum of Rs.78,000/- for the disability suffered by the appellant/claimant.

8. On perusal of the documentary evidences produced before the Court, namely, the wound certificate (Ex.P2) and medical treatment book (Ex.P7), this Court is of the considered view that, the finding rendered by the Tribunal that the injured has suffered 'functional disability' is totally erroneous, especially, when PW2, doctor has assessed the disability as only 36%. In view of the same, adoption of multiplier method, in the instant case, is totally unwarranted. Though, this appeal is filed by the claimant for enhancement of compensation, this Court, in the facts and circumstances of this case, feels that adopting multiplier

method is totally wrong and accordingly, the finding rendered by the Tribunal, in this aspect, is hereby vacated.

9. Taking into consideration, the deposition of Dr.Sampathkumar (PW2), the injuries sustained by the appellant/ claimant and also the surgery underwent by him, as could be seen from the medical treatment book (Ex.P7), this Court is of the considered opinion that, the disability sustained by the appellant/claimant should be fixed at 30%. Since, the accident is of the year 2008, awarding a sum of Rs.2,000/- per percentage of disability would meet the ends of justice. Accordingly, a sum of Rs.60,000/- is awarded towards 'partial permanent disability'.

10. Since, the appellant/claimant was admitted as an inpatient from 26.12.2008 to 07.01.2009 in L.K.M. Hospital, Erode and since, he had also underwent a surgery on 27.12.2008, the sum of Rs.10,000/- and Rs.5,000/- granted by the Tribunal under the heads 'pain and sufferings' and 'extra nourishment' is enhanced to Rs.20,000/- and Rs.7,000/- respectively. A sum of Rs.3,000/- granted by the Tribunal under the head 'transportation' is enhanced to Rs.10,000/-.

Since, the appellant/claimant was admitted as an inpatient for

13 days, a sum of Rs.5,000/- is awarded towards the 'attender's charges'. The Tribunal has not granted any amount towards 'loss of amenities' and therefore, a sum of Rs.5,000/- is awarded towards the same. Based upon the evidence of medical bills (Ex.P6), the Tribunal has granted a sum of Rs.30,619/- to the appellant/claimant towards 'medical expenses' and the same is hereby confirmed.

11. 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.	Partial permanent disability	Rs.78,000/-	Rs.60,000/-
2.	Pain and sufferings	Rs.10,000/-	Rs. 20,000/-
3.	Transportation	Rs.3,000/-	Rs.10,000/-
4.	Extra nourishment	Rs.5,000/-	Rs.7,000/-
5.	Loss of amenities	NIL	Rs.5,000/-
6.	Medical expenses	Rs.30,619/-	Rs.30,619/-
7.	Attender's charges	NIL	Rs.5,000/-
	Total	Rs.1,26,619/-	Rs.1,37,619/-

The compensation awarded by the Tribunal is enhanced from Rs.1,26,619/- to Rs.1,37,619/- which shall carry interest at the rate of 7.5% per annum.

12. 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.1,26,619/- to Rs.1,37,619/-.

(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/United India Insurance Company Limited is directed to deposited the enhanced compensation amount awarded by this court, i.e., Rs.1,37,619/- (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. 226 of 2009, dated 21.07.2010, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem 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-VI)

//True copy//

mbi Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Salem.

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

+1cc to Mr.M.Guruprasad, Advocate SR.No.23081

+1cc to Mr.T.Ravichandran, Advocate SR.No.22709

C.M.A.No.3111 of 2011

GMV (10/12/2019)

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