

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM :

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2403 of 2015

Gunasekaran,
S/o.Kaliyaperumal ... Appellant/Petitioner

-vs-

- 1.Sakthivel, S/o.Muthusamy
2.United India Insurance Co Ltd.,
Shanmugha Complex, 1-15, 24, H, 1st Floor,
New Idappadi Road, Sankari,
Salem District. ... Respondents/Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 to set aside the order dated 03.02.2014, made in M.C.O.P.No.4 of 2013 on the file of the Motor Accident Claims Tribunal, Tiruchengode.

For Appellant : Mr.C.Kulanthaivel

For 2nd Respondent : Mr.J.Chandran

JUDGMENT

The appellant herein is the person, who injured in the accident occurred on 04.06.2012. Aggrieved against the award dated 03.02.2014, in M.C.O.P.No.4 of 2013 made by the Motor Accident Claims Tribunal, Tiruchengode and for enhancement, this appeal has been preferred.

2.The brief averments of the claim petition are as follows:-

On 04.06.2012, at about 08.30 p.m., the appellant/claimant was traveling from Tiruchengode to Erode in a vehicle bearing Regn. No.TN.38.X.7193 TVS.50. At that time, a person who was driving the vehicle bearing Regn. No.TN.52.C.0817 (JCB), drove the same in a rash and negligent manner and hit the appellant's vehicle due to which, the appellant fell down and he sustained grievous injuries on his left leg and all over the body. The appellant was immediately taken to the Tirukumaran Hospital, Tiruchengode and admitted as inpatient. The petitioner had spent nearly Rs.2,30,000/- toward his medical expenses. The appellant had suffered very much physical pain and mental agony

due to injuries caused to him in the accident. The accident had occurred only due to the rash and negligent driving of the driver of the vehicle bearing No.TN.52.C.0817 (JCB). The above accident was reported to the Tiruchengode Rural police station and a case in Cr.No.333/2012 for the offences punishable under Sections 279 and 338 IPC was registered against the driver of the said vehicle and the same is now pending before the Judicial Magistrate, Tiruchengode. The injured/claimant's age is 36 years, who was hale and healthy and was earning Rs.10,000/- per month as income from his job. Due to the accident, the appellant is completely disabled and he could not do his work as before. So, the appellant has claimed compensation of Rs.5,00,000/- from the respondents. The 1st respondent is the owner of the vehicle bearing Regn.No.TN52.C.0817 (JCB), which caused the accident. The 2nd respondent is the insurance company under which, the 1st respondent's vehicle was insured, vide policy No.170982/31/11/01/00000870 for the period from 28.06.2011 to 27.06.2012. So, the respondents are liable to pay compensation in law.

3.The brief averments of the counter statement filed by the 1st respondent are as follows:-

The claim petition is false and not maintainable in law and on facts. The 1st respondent does not admit any of the allegations except those that are specifically admitted herein and the appellant is put of strict proof of the same. The 1st respondent denies the fact that the injured is aged about 36 years and his monthly income is Rs.10,000/- per month. He reserved his rights to file additional counter when it is necessary. The 1st respondent insured his vehicle with the 2nd respondent at the time of the accident and this accident was intimated to the 2nd respondent, who was the insurer of the 1st respondent vehicle at the time of the accident. So, the 1st respondent is not liable to pay any compensation to the appellant.

4.The brief averments of the counter statement filed by the 2nd respondent are as follows:-

All the allegations made in the claim petition are false, frivolous, vexatious and not sustainable either in law or on facts. The 2nd respondent submits that the driver of the 1st respondent's vehicle drove the JCB without driving licence. Since the 1st respondent allowed the driver to drive the said vehicle without driving licence at the time of accident, the 2nd respondent is not liable to pay any compensation to the appellant. The allowing of the driver to drive the said JCB without driving licence is purely violation of policy conditions. The petitioner drove the vehicle without driving licence and caused the accident. Hence, the negligence contributed by the appellant has to be considered while fixing

the ratio of negligence contributed by the appellant and the driver of the 1st respondent. The appellant is now hale and healthy, and attending his work as before. There is no disability and loss of earning and the one alleged is false. The 2nd respondent may be permitted to take all the defences available to the 1st respondent, i.e., the owner of the vehicle under Section 170 of the Motor Vehicles Act.

5.The learned counsel for the appellant contended that the Tribunal has failed to consider the evidence of P.W.3 and also P.W.2, who treated the injured appellant. Ex.P6, the discharge summary as well as the wound certificate, Ex.P5 reveal the fact that the appellant has sustained fracture in his femur bone and the same was also malunited and the evidence of P.W.2 reveals the fact that there is disability of 35% and that has been elaborately placed before the Tribunal by P.W.2. The evidence of P.W.2 has spoken about the future medical expenses for removing the screws and steel plates which were not considered by the Tribunal and further, the sum awarded under the head "pain and suffering", "loss of earnings" are all not reasonably considered by the Tribunal while the appellant/claimant claims himself as a two wheeler mechanic and his age is also 36 years and because of his injuries sustained in the accident, he cannot continue his avocation and the physical movement of his legs are very much restricted and these aspects were not considered by the Tribunal and the sum awarded by the Tribunal is even just a compensation and that has to be enhanced.

6.On hearing the learned counsel on both sides and perusing the materials placed on record, it is observed that the Tribunal has awarded a sum of Rs.1,26,772/- under various heads, which are as follows:-

Heads	Compensation awarded by the Tribunal
Partial loss of earnings	Rs. 15,000/-
Transport to Hospital	Rs. 3,000/-
Extra Nourishment	Rs. 5,000/-
Damages of Clothing & Articles	Rs. 500/-
Medical Expenses	Rs. 58,272/-
Pain and Suffering	Rs. 5,000/-
Compensation for Partial Permanent Disability	Rs. 40,000/-
Total	Rs.1,26,772/-

7.The grievance of the appellant is that the injured person is a mechanic and at that time of accident, he was only 36 years and the injury sustained by him is very serious in nature, he underwent surgery and further, he also requires surgery in future for removal of the screws fixed at that time of surgery.

8.The evidence of P.W.2 and P.W.3 are very clear that the percentage of disability assessed by P.W.2 is very much reasonable and the injury also caused a permanent disability whereas, the Tribunal has not considered the aspect and awarded the compensation as Rs.40,000/-, which is not a reasonable sum when the avocation of the claimant is mechanic and he has lost his future prospects because of the disability caused by the injury. Hence, the appellant is very much aggrieved by the Tribunal's determination in awarding the sums by taking the monthly income which is very meager to the tune of Rs.5,000/-. On the whole, the Tribunal has not properly considered the disability, loss of earning and other inconvenience because, the injury caused by the accident totally shuns the future prospects of the injured person.

9.On a perusal of the records, it is revealed that the appellant, injured person sustained fracture injury and surgery was also done to him and screws were fixed during the said surgery. The evidence of P.W.2 is also to the fact that he requires another surgery for removal of such screws and while fixing the compensation, the nature of injuries and the disability sustained by him, the mode of treatment given to him, future requirement of another surgery, the related medical expenses and loss of income during that period are all to be necessarily considered.

10.On a perusal of the evidences as well as the observations made by the Tribunal, it is observed that the petitioner has got only one fracture on his femur bone and the disability taken by the Tribunal at 20% and awarded Rs.40,000/- by taking Rs.2,000/- per one percentage is reasonable and the same is confirmed. With regard to the sum awarded by the Tribunal at Rs.15,000/- towards partial loss of earning for three months, this Court is of an opinion that the same needs to be modified, in view of the nature of injuries sustained by the appellant on his leg. The appellant, being an injured person, would definitely lost income during the period of treatment and until he resumes his avocation. Hence, considering the age of the injured as well as the injuries sustained, it should be Rs.6,000/- per month and accordingly, enhanced to Rs.18,000/- for three months under the said head. Similarly, by considering the nature of injuries and the period of treatment, this Court is inclined to enhance the sum awarded by the the Tribunal under the heads Transport to

Hospital, extra nourishment and pain and suffering to some extend and confirm the award under the heads damages of clothing and articles and medical expenses and grants a sum of Rs.10,000/- towards future medical expenses.

11.Further, when the nature of injury is such that the appellant would not be comfortable, reasonable sum is awarded as follows:-

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or removed
1.	Partial Loss of Earnings	Rs.15,000/-	Rs.18,000/-	Enhanced
2.	Transport to Hospital	Rs.3,000/-	Rs.10,000/-	Enhanced
3.	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
4.	Damages of Clothing & Articles	Rs.500/-	Rs.500/-	Confirmed
5.	Medical Expenses	Rs.58,272/-	Rs.58,272/-	Confirmed
6.	Pain and Suffering	Rs.5,000/-	Rs.10,000/-	Enhanced
7.	Future Medical Expenses	Nil	Rs.10,000/-	Nil
8.	Compensation for partial permanent disability	Rs.40,000/-	Rs.40,000/-	Confirmed
	Total	Rs.1,26,772/-	Rs.1,56,772 /-	Enhanced to Rs.1,56,772/-

With the above modification, this appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

To

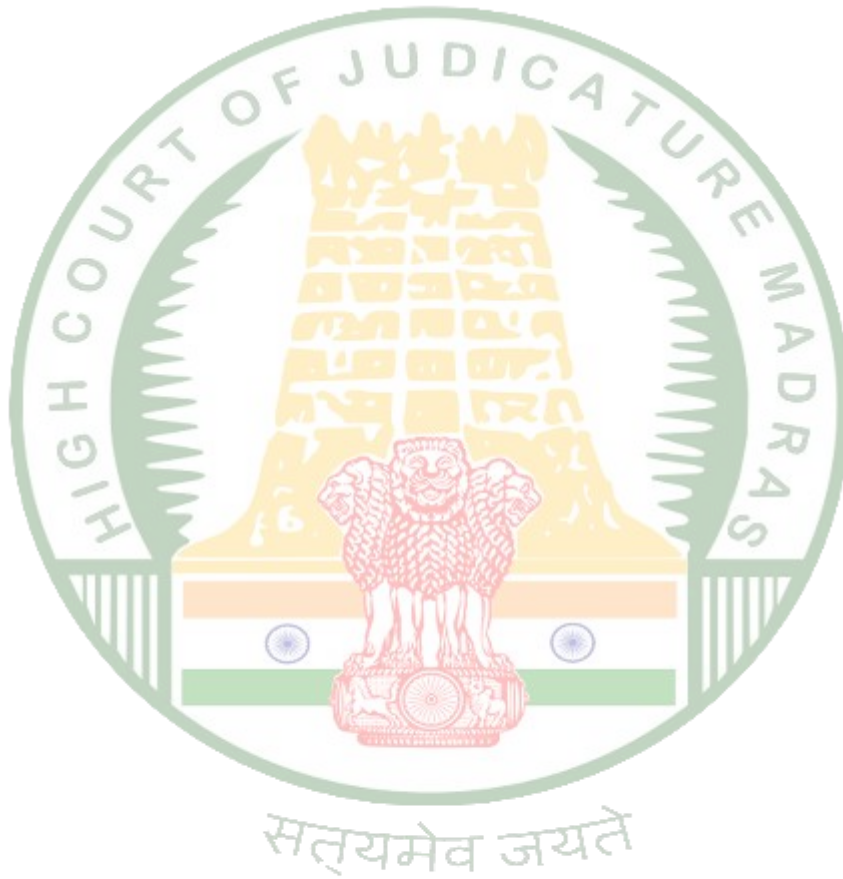
The Motor Accident Claims Tribunal, Tiruchengode.

+1 cc to Mr.J.Chandran, Advocate, sr.78547

+1 cc to Mr.C.Kulanthaivel, Advocate, sr.77849.

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