

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1438 of 2016

V.Selvarajan

Appellant/Petitioner

Vs

1.V.Anbalagan

2.ICICI Lombard General
Insurance Company Limited
Rep by its Branch Manager,
No.84/85, Waltax Road,
Paris, Chennai 3.

3.P.Umamaheswari

4.United India Insurance
Company Limited,
Rep. by its Branch Manager,
Arni, Tiruvannamalai District.

Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.153 of 2010 dated 09.03.2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Arni.

For Appellant : Mr.P.Satheesh Kumar

For Respondents : Mrs.R.Sree Vidhya for R2
Mr.A.Dhiraviyanathan for R4
R1 & R3 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.153 of 2010 dated 09.03.2016, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Arni. The claimant is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief facts leading to the claim petition is that on 05.06.2010, at about 07.45 p.m., when the appellant/claimant was travelling in a Maruthi car along with

his friends bearing Registration No. TN 73 A 4759, belonging to the first respondent and insured with the second respondent was proceeding from Thiruvallam to Arcot in MBT road. The driver of the car drove the vehicle in a very slow manner and on the left extreme side of the road. At that time, a lorry bearing Registration No. TN 34 H 4160 belonging to the third respondent and insured with the fourth respondent, which came in the opposite direction, driven by its driver in a rash and negligent manner, while trying to over take a auto, dashed against the said car. As a result of which, the appellant/claimant sustained multiple injuries and a criminal case in Crime No.158 of 2010 was also registered. The appellant/claimant sustained disability and also met with huge loss of income, mental agony, pain and sufferings, medical expenses and future loss of income due to the said disability. Hence, the appellant/claimant claimed a sum of Rs.5,00,000/- as compensation for the said loss.

3.The learned counsel for the appellant/ claimant submitted that the Tribunal has fastened the liability on the part of the driver of the lorry, which is insured with the fourth respondent herein. The award passed by the Tribunal is very much on the meager side. The Tribunal has failed to consider the nature of injuries sustained by the appellant/claimant is permanent in nature and no amount was awarded towards loss of earning capacity. The Tribunal has awarded a sum of Rs.25,200/- towards permanent disability, which is not reasonable and it is a just compensation. The sum awarded towards pain and sufferings at Rs.5,000/- inspite of the fact that when the appellant/claimant was treated as inpatient in Miot Hospital for 26 days, which was revealed from the evidence of PW.2, the same was not appreciated properly by the Tribunal while assessing the disability. Further, the medical bills issued by Singapore Hospital are not at all considered by the Tribunal.

4. The fourth respondent /Insurance Company denied the mode of accident as alleged in the claim petition. The fourth respondent /Insurance Company contended that the accident took place only due to the rash and negligent driving of the driver of the said car, wherein, the petitioner travelled and the fourth respondent/ Insurance Company is not vicariously liable to pay any compensation. He further contended that the Tribunal has considered the age and occupation of the claimant and awarded a total compensation of Rs.75,571/- is very much reasonable.

5.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 said lorry and

awarded a sum of Rs.75,571/- as compensation under the following heads:

Compensation for disability	Rs.25,200/-
Pain and sufferings	Rs.5,000/-
Transportation	Rs.5,000/-
Medical expenses	Rs.39,371/-
Extra nourishment	Rs.1,000/-
Total	Rs.75,571/-

6. Aggrieved against the said award, the appellants/claimants have preferred this appeal for enhancement of compensation.

7. On perusing the available records, it is observed that the appellant/ claimant sustained grievous injuries due to the accident occurred on 05.06.2010, while he was traveling in the car, belonging to the first respondent and insured with the second respondent. Based on Ex.P1/ First Information Report and the evidence of PW.1 the Tribunal has come to the conclusion that the rash and negligent driving of the driver of the lorry only caused the accident. Moreover, there is no rebuttal evidence on the side of the respondents to disbelieve the manner of accident, as narrated by the claimant. Hence, the Tribunal has fixed the liability on the part of the driver of the third respondent's vehicle and negligence on the part of the driver of the lorry. This Court is not inclined to interfere with the findings arrived at by the Tribunal on the negligence aspect.

8. The Tribunal also discussed that the claimant sustained injuries and he was immediately admitted in Christian Medical College and Hospital, Vellore and the Discharge Summary (Ex.P8), Medical Bills (Ex.P3 & Ex.P4), which were all furnished by the claimant for the nature of injuries sustained by him and the medical expenses incurred by him and duration of period for the said treatment and thereby he claimed a sum of Rs.5,00,000/-. The Tribunal has also observed by verifying the evidence of PW.2, who has issued the Disability Certificate (Ex.P9), in which, he assessed the disability of the claimant at 35%, whereas the Tribunal has taken the disability at 12%, considering the nature of injuries sustained by the claimant. Further, it is observed that the claimant was aged about 65 and earning capacity was also discussed and the disability arrived at 12% by the Tribunal is very much reasonable.

9. The other grievance raised by the appellant/claimant is that since he was working at Singapore, he continued his treatment at the Hospital located at Singapore and incurred an additional sum of 1486 dollars towards medical expenses. In order to establish the same, he produced Ex.P8/ Medical Records and Bills. The said document was very much relied by the appellant/claimant by stating that once again he admitted in the Singapore Hospital on 16.06.2010 and took treatment upto 26.06.2010 and thereby he incurred medical expenses.

10. These aspects were not considered by the Tribunal and there is no contra evidence regarding treatment taken by the claimant at Singapore Hospital. In view of the above discussions, a sum of Rs.77,140/- (1486 dollars x 51.91 INR) (rounded off) towards medical expenses (Ex.P8) incurred by the claimant at Singapore Hospital is hereby awarded, apart from Rs.39,371/- already awarded by the Tribunal. Hence, this Court is inclined to award a total sum of Rs.1,16,411/- towards medical expenses. The Tribunal has awarded a meager sum of Rs.5,000/- towards pain and sufferings and a sum of Rs.1,000/- towards nourishment. Hence, this Court is inclined to increase a sum of Rs.10,000/- towards pain and sufferings and Rs.5,000/- towards nourishment. The other aspects such as transportation is properly considered by the Tribunal. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Disability	25,200.00	25,200.00
2.	Medical expenses	39,371.00	1,16,411.00
3.	Pain and sufferings	5,000.00	10,000.00
4.	Extra nourishment	1,000.00	5,000.00
5.	Transportation	5,000.00	5,000.00
Total		75,571.00	1,61,611.00

Thus, the appellant/claimant is entitled to a sum of Rs.1,61,611/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.75,571/- to Rs.1,61,611/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/claimant is directed to pay the

court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The third and fourth respondents are jointly and severally directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkrr

To
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Arni.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Satheesh Kumar, Advocate SR.64460
+1cc to Mr.A.Dhiraviyanathan, Advocate SR.64597
+1cc to Mrs.R.Sreevidhya, Advocate SR.65461

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PM(CO)
CB(16/06/2020)

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