

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.1058 of 2015

Subramaniam

Appellant/Petitioner

Vs

1.Mayilsamy

2.National Insurance Company Limited,
Divisional Office II
Ramakrishna Road,
Salem 7.

Respondents/Respondents

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.5 of 2006 dated 03.12.2009 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : Mrs.R.Sree vidhya for R2
R1 - No appearance

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.5 of 2006 dated 03.12.2009, on the file of the Motor Accident Claims Tribunal, the Principal Subordinate Judge, Salem. The appeal has been preferred by the appellant/claimant, aggrieved against the award made by the Tribunal at Rs.10,000/- against the claim of Rs.2,00,000/-.

2. The brief facts leading to the claim petition is that on 28.08.2005, at about 01.00 p.m., when the claimant was riding his two wheeler bearing Registration No. TN 30 J 2175 on the Omalur main road, near Kalpana Theatre bus stop. At that time, the van bearing Registration No. TN 30 V 2770 belonging to the first respondent herein came in the same direction in a rash and negligent manner, hit against the claimant. As a result of which, the claimant sustained multiple injuries and also sustained loss of earning, pain and sufferings,

Medical expenses. Hence, the appellant/claimant claimed a sum of Rs.2,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent herein.

3. The Tribunal after analysing the oral pleadings and evidence on record has concluded that the accident occurred only due to the rash and negligent driving on the part of the driver of the van bearing Registration No. TN 30 V 2770 and since the second respondent being the insurer of the said vehicle has liable to pay the said compensation. The Tribunal has awarded a compensation of Rs.10,000/- together with interest at the rate of 7.5% to the claimant.

4. Aggrieved against the said award, the appellant/claimant has preferred this appeal for enhancement of compensation awarded by the Tribunal.

5. Heard, both sides and perused all the materials available on record.

6. The learned counsel appearing for the appellant/claimant would submit that the Tribunal was holding that the driver of the van was having driving licence to drive L.M.V and the said vehicle which was driven at the time of the accident is not a heavy vehicle and hence, the Insurance Company ought to have been liable to pay the compensation. The Tribunal has failed to see that if the driver was not at all having a driving licence. The Insurance Company need not be liable to pay the compensation. Otherwise it has to pay and recover from the owner of the vehicle. The other grievance raised by the appellant/claimant is that the Tribunal without considering documentary and oral evidence adduced by the appellant, has awarded a very meager sum of Rs.10,000/- towards injuries, which is not properly considered by the Tribunal.

7. The learned counsel appearing for the second respondent/Insurance Company fairly submitted that the claimant was doing own business, earning a sum of Rs.5,000/- per month. However, he submitted that since there was no proof produced by the appellant/claimant before the Tribunal to prove the monthly income of the claimant, the compensation awarded by the Tribunal under the head 'Loss of injuries' is just and fair.

8. The Tribunal has observed the evidence and documents placed by the second respondent/ Insurance Company and given a finding that the vehicle driven by

the driver is goods vehicle whereas he possessed the licence to drive the light motor vehicle and the said licence did not contain batch endorsement. The Tribunal has not ordered pay and recovery. The appellant/claimant has not filed any documents before the Tribunal to prove the injuries sustained by him. However, it is observed from Ex.P2 /Wound Certificate that the appellant/claimant sustained injuries in the head and he was admitted in the hospital from 28.08.2005 to 05.09.2005.

9. This court is of the opinion that when the first respondent's driver was not in possession of a driving licence for driving goods vehicle, the Tribunal should have directed the Insurance Company to pay the compensation amount and then recover the same from the owner of the vehicle and that the Tribunal has committed an error in directing the first respondent to pay the entire compensation amount to the claimant. In view of the same, the Insurance Company is directed to pay the compensation to the claimant and then recover the same from the owner of the van bearing Registration No. TN 30 V 2770.

10. Considering the period of treatment and nature of injuries sustained in the specific part of the head, the Tribunal has awarded a sum of Rs.10,000/- towards injuries, which is proper and reasonable. The Tribunal has failed to award any amounts towards Pain and sufferings, Attender's charge, Extra nourishment, Transportation and Medical Expenses. Hence, this Court is inclined to award a sum of Rs.10,000/- each towards Pain and sufferings, Attender's charge and Medical Expenses and a sum of Rs.5,000/- each towards Extra nourishment and Transportation. 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.	Injuries	10,000.00	10,000.00
2.	Pain and sufferings		10,000.00
3.	Attender's charge		10,000.00
4.	Medical expenses		10,000.00
5.	Transportation		5,000.00
6.	Extra nourishment		5,000.00
Total		10,000.00	50,000.00

Thus, the claimant is entitled to a sum of Rs.50,000/-

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.10,000/- to Rs.50,000/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The orders passed by the Tribunal directing the first respondent to pay the compensation amount to the appellant/ claimant is set aside.

(iv) The second respondent/ Insurance Company, is 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 and then recover the same from the owner of the van bearing Registration No. TN 30 V 2770 on the same cause of action. 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 (CS-IV)

//True Copy//

Sub Assistant Registrar

vr

To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Salem.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.77212

C.M.A.No.1058 of 2015

BS (CO)
CB(02/09/2020)