

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :05.04.2019

Judgment Delivered on :23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2594 of 2012

Muniappan

...Respondent/Appellant

..Versus..

1.Sathiyannarayanan
(1st respondent set-exparte before the Tribunal)

2.The Divisional Manager,
The National Insurance Co.Ltd,
No.19, Officers line,
Vellore. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 27.07.2010 made in M.C.O.P.No.854 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thiruvannamalai.

For Appellant : Ms.A.Subadra
for M/s.M.Malar

For R1 : Exparte before the Tribunal

For R2 : Mr.D.Bhaskaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 27.07.2010 made in M.C.O.P.No.854 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Thiruvannamalai.

2. The essence of the case is that the claimant is of good physique and good health. The claimant borrowed to his friend Sathyanarayanan's motorcycle owned by bearing Registration No.TN 25 D 5494, one Nehru is driving the motorcycle, the claimant to sit on the sidelines to go to Vengikal on 10.07.2003 at about

9.45 a.m., in the morning Ramachandra Hotel opposite, Vellore Road, T.V.Malai Town. The motorcyclist was driving at high speed and dense and collided with a lorry bearing Registration No.TMM 0039 in front of the claimant. The accident resulted in a physical and fracture injury to the claimant. They were rushed to the T.V.Malai Government General Hospital. The accident is due to the high speed of the first respondent's motorcycle driver. Therefore, the claim petition was filed seeking compensation of Rs.3,00,000/- by the respondents jointly or severally liable to pay the compensation.

3. The factum of the accident, manner of the accident and the rash and negligence on the part of the driver of the first respondent's-vehicle which is insured with the second respondent vehicle are not in dispute and hence, the finding rendered on the scope by the Tribunal is hereby confirmed.

4. The Tribunal on a consideration of the admission of R.W.1, staff from the Insurance Company has held that the injury has travelled as a pillion rider in the two wheeler and there is a valid policy coverage. In view of the admission of the said witness and has held that both respondents 1&2 are jointly and severally liable to pay the compensation.

5. On the point of quantum of compensation, both the parties are heard.

6. P.W.1 examined himself and deposed regarding the accidental injuries. P.W.2-Dr.Ravindran who had issued Disability Certificate under Ex.P9 would depose that both the bones on the deep and tibia bones on the right leg was fractured and hence, he was taken treatment initially at Government Hospital, Thiruvannamalai on 10.07.2003. Subsequently, discharged and re-admitted at Ramachandra Medical College Hospital at Chennai on 11.07.2003 and surgery was performed on him on 12.07.2003 and he has taken treatment as an in-patient for 7 days. Subsequently, discharged on 17.07.2003 as could be seen from discharge summary Exhibit P13, P.W.2-Doctor had assessed disability at 30% .

7. On going through the evidence of P.W.2-Doctor coupled with Ex.P9-Disability Certificate and Ex.P11-Discharge summary, this Court finds that the disability fixed by 30% by the Tribunal does not call for any interference and accordingly, Rs.75,000/- awarded as compensation by the Tribunal is also hereby confirmed.

8. Further, under the head "pain and suffering", the Tribunal awarded Rs.10,000/- and taking into consideration the

suffering undergone by the claimant, it is hereby enhanced to Rs.15,000/-Further, the amount of Rs.5,000/- is hereby awarded 'for loss of amenities'. With regard to 'medical expenses' the Tribunal awarded Rs.34,971/- as per Ex.P12 is hereby confirmed. With regard to 'Future medical expenses', this Court awards a sum of Rs.30,000/- as per Ex.P13. With regard to "Nutrition and Extra nourishment", it is hereby enhanced from Rs.2,000/- to Rs.10,000/-. With regard to 'transportation', it is hereby enhanced from Rs.2,000/- to Rs.15,000/-. With regard to 'attender charges' the Tribunal awarded a sum of Rs.2,000/- is hereby enhanced to Rs.10,000/-. With regard to 'Damages & Clothes', this Court awards a sum of Rs.500/-. In respect of the 'loss of income' during the period of treatment for four months, a sum of Rs.18,000/- (4500 x 4) is hereby awarded.

9. Accordingly, the award of the Tribunal in M.C.O.P.No.854 of 2003 is modified as follows:-

Sl No	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent Disability	Rs. 75,000/-	Rs. 75,000/-
2.	Medical Expenses	Rs. 34,971/-	Rs. 34,971/-
3.	Future medical expenses	-----	Rs. 30,000/- (as per Ex.P13)
4.	Transportation	Rs. 2,000/-	Rs. 15,000/-
5.	Nutrition & Extra Nourishment	Rs. 2,000/-	Rs. 10,000/-
6.	Attender's charges	Rs. 2,000/-	Rs. 10,000/-
7.	Pain & Sufferings	Rs. 10,000/-	Rs. 15,000/-
8.	Loss of income	Rs. 12,000/-	Rs. 18,000/-
9.	Loss of amenities	-----	Rs. 5,000/-
10.	Damages & cloths	-----	Rs. 500/-
	Total	Rs.1,37,971/-	Rs. 2,13,471/-

The compensation awarded by the Tribunal is enhanced from

Rs.1,37,971/- to Rs.2,13,471/- which shall carry interest at the rate of 7.5% per annum.

10. 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.1,37,971/- to Rs.2,13,471/-.

(iii) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/National Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.2,13,471/- (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. 854 of 2003 on the file of the Motor Accidents Claims Tribunal, (Principal Subordinate Judge), Thiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made by the second respondent-Insurance Company, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(Principal Subordinate Judge)
Thiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate SR.63120
+1cc to Mr.D.Bhaskaran, Advocate SR.62700

C.M.A.No.2594/2012

SVI (CO)
CB(12/12/2019)