

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2625 of 2012

V.Shanmugam

... Appellant/Petitioner

.Vs.

1.S.V.Vasudevan

2.United India Insurance Company Limited,
rep by its The Divisional Office-I
104-A, Peramanoor Main Road,
Salem - 7.

... Respondents/Respondents

(1st Respondent was set exparte
Hence Notice in the CMA may be Dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 04.01.2011 passed in M.C.O.P.No.908 of 2006 on the file of the Motor Accident Claims Tribunal / II Additional Sub Court, Salem.

For Appellant : Mr.M.Guruprasad

For R1 : No appearance

For R2 : Mr.J.Chandran

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.908 of 2006 on the file of the Motor Accident Claims Tribunal / II Additional Subordinate Court, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident on 10.06.2006.

2. The case of the claimant is that on 10.06.2006, he was a pillion rider in a motorcycle bearing Registration No. TN 34 C 5685 on Pallipalayam - Thiruchengode Main Road and at about 10.30 P.M., when he was nearing T.V.S. Medu, the rider of the motorcycle rode the vehicle rashly and negligently and hit another motorcycle bearing Registration No. TN 30 Y 7535, as a result of which, the claimant fell down and sustained grievous injuries.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 34 C 5685 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the United India Insurance Company, the owner and insurer of the motorcycle are jointly and severally liable to pay compensation.

4. The owner of the motorcycle bearing Registration No. TN 34 C 5685 remained absent before the Tribunal and therefore he was set exparte. The United India Insurance Company contested the claim petition on all the grounds available to the insured. The learned II Additional Subordinate Judge / Motor Accident Claims Tribunal, Salem, after analysing the evidence on record, awarded a compensation of Rs.2,22,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being 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.

5. Heard, Mr.M.Guruprasad, learned counsel appearing for the appellant / claimant and Mr.J.Chandran, learned counsel appearing for the second respondent / United India Insurance Company. No appearance on behalf of the first respondent.

6. A perusal of the discharge summary (Ex.P7) shows that the claimant has sustained the following injuries:

"(i) Bilateral major crush injury lower limb with open type IIIB fracture shaft right tibia with skin loss.

(ii) Closed fracture shaft lateral Malleolus right.

(iii) Open fracture dislocation of 1st TMT joint with composite tissue loss at medial border of right foot.

(iv) Degloving injury left foot with heel pad avulsion.

(v) Open intra articular comminuted fracture calcaneum left."

Since the claimant is a textile merchant, adopting multiplier method is warranted in the present case as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.A.D.Sampathkumar (P.W.2) has assessed the partial permanent disability as 45%. Since the disability of 45% cannot be for the whole body, 20% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 30 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the

claim petition, it is contended that the claimant was earning a sum of Rs.15,000/- per month. Since no proof showing the income of the claimant is filed, the notional monthly income is fixed at Rs.5,000/-, since the accident took place in the year 2006.

$$\begin{aligned}\text{Loss of earning capacity} &= \text{Rs.5,000/-} \times 12 \times 17 \times 20/100 \\ &= \text{Rs.2,04,000/-}\end{aligned}$$

7. On account of the accident, the claimant would not have been in a position to attend to his routine work for three months and therefore, a sum of Rs.15,000/- (Rs.5,000/- X 3 months) is awarded towards "loss of income". The claimant produced medical bills to the tune of Rs.67,000/- and the same is awarded towards "medical expenses". The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.2,04,000/-
2.	Medical expenses	Rs.67,000/-
3.	Loss of income	Rs.15,000/-
4.	Pain and sufferings	Rs.10,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Loss of amenities	Rs.10,000/-
9.	Damage to clothes	Rs.500/-
Total		Rs.3,18,500/-

8. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,22,000/- to Rs.3,18,500/-, which would carry interest at the rate of 7.5% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The owner and insurer of the motorcycle (respondents 1 and 2) are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.3,18,500/- (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.908 of 2006 on the file of the Motor Accident Claims Tribunal / II

from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

krk

To

1.The Motor Accidents Claims Tribunal,
The II Additional Sub Court,
Salem.

2.The Section Officer,
VR Section,
High Court of Madras.

+1cc to Mr.M.Guruprasad, Advocate SR.No.98538

+1cc to Mr.J.Chandran, Advocate SR.No.97527

C.M.A.No.2625 of 2012

BR(CO)
GMY(16/06/2020)