

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on :26.04.2019

Judgment pronounced on :29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2715 of 2012

Murugan ...Appellant/Petitioner

Vs.

1.Subramanian

2.Jayalakshmi

(Respondents 1&2 were set exparte before the Tribunal
Hence, notice in C.M.A is dispensed with)

3.The Oriental Insurance Co.Limited,
Gobichettipalayam,
Erode District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.06.2012 made in M.C.O.P.No. 74 of 2011, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Erode.

For Appellant : M/s.R.Shase for
Mr.M.Guruprasad

For R1&R2 : Exparte before the Tribunal

For R3 : Mr.S.Manohar

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 74 of 2011, on the file of the Motor Accidents Claims Tribunal, the Chief Judicial Magistrate, Erode. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 12.07.2010.

2. The brief case of the appellant/claimant is as follows:-

(i) The appellant/claimant was aged 35 years on the date of the accident. He was working as a Power Loom Cooly at Moorthi Pattarai, Periyavalasu and earning a sum of Rs.6,000/- per month.

(ii) On 12.07.2010 at about 20.00 hours., the appellant/claimant and others were travelling in the bus bearing Registration No.TN 33 AA 1919 belonging to the second respondent from Gopichettipalayam to Erode. The first respondent was driving the bus in a rash and negligent manner and at an uncontrollable speed and as a result, the bus capsized near Kavindapadi-Chettipalayam bridge. Due to the said accident, the appellant/claimant sustained (i) Left ear upper side totally loss (ii) Left side Head cut injury (iii) Loss of hearing and disfigurement and injuries all over the body.

(iii) Immediately after the accident, the appellant/claimant was taken to Government Hospital, Erode. The rash and negligent riding of the rider of the above said bus was the sole reason for the above said accident. There was no negligence on the part of the appellant/claimant.

3. The owner of the bus bearing Registration No.TN 33 AA 1919 and the second respondent were absent before the Tribunal, and therefore, they were set ex-parte. The Oriental India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Ex.A1 to Ex.A19 were marked and on behalf of the respondents, no one documents were adduced.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.65,000/- as compensation together with interest at the rate of 9% per annum. Having not 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. After hearing both the parties and perusing the materials available on record, it is seen that the facts of the accident involvement of the vehicle and manner of the accident and the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the first respondent's vehicle who was insured with the third respondent are not in dispute and the same is hereby confirmed.

6. On the point of quantum, both the parties are heard.

7. The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant has suffered (i) Left ear upper side totally loss (ii) Left side Head cut injury (iii) Loss of hearing and disfigurement and injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital, Erode from 12.07.2010 to 18.07.2010. He would also submit that as per Exhibit A11-Audiogram Sheet, the claimant has suffered loss of hearing and the same was not considered by the Tribunal. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

8. The learned counsel appearing for the third respondent/Oriental Insurance Company Limited would contend that the E.N.T Specialist has not examined regarding Exhibit A-11-Audiogram Sheet and the appeal is only with regard to Rs.1,25,000/-. Hence, the third respondent/Insurance Company is not liable to pay any compensation to the claimant.

9. After going through the evidence of Exhibit A7-Discharge summary, it is seen that he has suffered disfigurement on the ear on the left side and also loss of hearing. It is seen that P.W.2-Doctor K. Periasamy who had issued Exhibit A17-Disability Certificate as stated that the appellant/claimant has suffered 70% disability.

10. On going through Exhibit A13-National Identity Card Pass Book issued by the Government of Tamil Nadu, Department of Rehabilitation of the Deceased National Identity Card and Pass Book with Disability Certificate, the claimant has been assessed as disability at 70% and also stated that the claimant-Murugan, S/o.Narayanan is a case of B.A.L-severe sensorineural hearing loss and disability is fixed at 70% and in view of the oral evidence of P.W.2-Doctor coupled with Exhibit A17-Disability and also coupled with Exhibit A13-National Identity Card Pass Book, this Court is of the considered view that the permanent disability is calculated at Rs.1,500/- per percentage of disability awarded Rs.1,05,000/- (70%x1500).

11. Since the appellant/claimant was admitted as an in-patient from 12.07.2010 to 18.07.2010 in Government Hospital, Erode, the sum of Rs.5,000/- and Rs.5,000/- granted by this Court under the heads 'pain and sufferings' and 'loss of amenities' as against awarded by the Tribunal. A sum of Rs.5,000/- granted by the Tribunal under the head 'transportation and miscellaneous expenses' is hereby confirmed. Since the appellant/claimant was admitted as an inpatient for 7 days, this Court awards a sum of Rs.5,000/- towards the

'attender's charges'. With regard to 'medical bill' as per Exhibit A15, this Court awards a sum of Rs.1143/-. With regard to 'nutrition and extra nourishment', this Court awards a sum of Rs.5,000/-

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 74 of 2011 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	-----	Rs. 1,05,000/-
2.	Loss of income	Rs. 10,000/-	Rs. 10,000/-
3.	Transportation & miscellaneous expenses	Rs. 5,000/-	Rs. 5,000/-
4.	Nutrition & Extra nourishment	-----	Rs. 5,000/-
5.	Loss of amenities & Pain and sufferings	Rs. 50,000/-	-----
6.	Loss of amenities	NIL	Rs. 5,000/-
7.	Pain and sufferings	-----	Rs. 5,000/-
8.	Attender's charges	-----	Rs. 5,000/-
9.	Medical bill	-----	Rs. 1,143/-
	Total	Rs. 65,000/-	Rs.1,41,143/- - rounded off Rs.1,41,140/- -

The compensation awarded by the Tribunal is enhanced from Rs.65,000/- to Rs.1,41,140/- which shall carry interest at the rate of 7.5% per annum.

13. 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 reduced from Rs./- to Rs.1,41,140/-.

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

(iv) The third respondent/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.1,41,140/- (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. 74 of 2011, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Erode within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Erode.

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

+1cc to Mr.M.Guruprasad, Advocate Sr.42916
+1cc to Mr.S.Manohar, Advocate Sr.42027

C.M.A.No.2715 of 2012

mp[co]
srg 07/08/2019