

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3759 of 2011

Ramalingam

..Appellant/Petitioner

Vs

1. Ravindran

2. Uthira kumar

3. The Divisional Manager
The United India Insurance Co. Limited,
No.46, Katpadi Salai
Vellore.

4. The Divisional Manager,
The New India Assurance Co. Limited,
No.1, Officers Line,
Vellore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 24.08.2006 in MACTOP. No.852 of 2003 passed by the Motor Accidents Claims Tribunal/Additional Sub Judge Tiruvanamalai.

For Appellant : Mrs.Subadra
for M/s.M.Malar.

For Respondents : R1 & R2 - Exparte
Mr.D.Baskaran
for R3.

Mr.G.Udayasankar for R4

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J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal/Additional Sub Judge, Tiruvanamalai in MACTOP.No. 852 of 2003, dated 24.08.2006.

2. It is the case of the appellant/claimant that on 03.07.2002 at about 5.00 P.M., the appellant/claimant was

driving an Auto bearing Registration No.TMR 4757 on Tiruvannamalai - Polur road, near Nayidumangalam Graveyard and at that time, a Mahindra Bolero Van bearing Registration No.TN 23 F 5135 came in a rash and negligent manner and dashed against the said Auto. Due to the accident, the appellant / claimant sustained fracture and multiple injuries all over his body. Immediately, the appellant / claimant was admitted in the Government Hospital at Tiruvannamalai. Thereafter, he was admitted in Private Hospital for further treatment. According to the appellant / claimant, the rash and negligent driving of the driver of the Mahindra Bolero Van was the cause of the accident. Hence, he filed a claim petition before the Tribunal, claiming a sum of Rs.7,00,000/- as compensation.

3. Before the Tribunal, on the side of the appellant, PW1 to PW3 were examined and Exs.P1 to P12 were marked. On the side of the respondents, no oral or documentary evidences were marked.

4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Mahindra Bolero Van and awarded a sum of Rs.2,93,000/- together with interest at the rate of 7.5% per annum as compensation to the appellant / claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. The learned counsel for the appellant would submit that the appellant is an Auto driver, who earned a sum of Rs.5,000/- per month on the date of the accident and the Tribunal without considering the same fixed a sum of Rs.25,000/- as notional income per year which is very meagre. He would further submit that due to the accident, the appellant / claimant sustained fracture in the shaft of femur on right side, fracture of both bone in the right leg and plating for shaft of femur was also done. PW2 Doctor assessed the disability at 75%. In addition to this, the appellant / claimant sustained urethral problem and PW3 another Doctor assessed the disability at 50%. Therefore, he would submit that the Tribunal ought not have reduced the disability to 60%. The learned counsel also prayed for awarding compensation under the heads mental agony and loss of marital prospects. She also sought for enhancement of compensation under other heads.

7. Per contra, the learned counsel appearing for the third respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded

compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant / claimant as well as the third respondent and also perused the materials available on record before this Court.

9. From the claim petition, it is seen that the appellant / claimant was an Auto driver, aged 25 years on the date of the accident, earning a sum of Rs.5,000/- per month. In the absence of any evidence, the Tribunal fixed the notional income as Rs.25,000/- per year and adopted multiplier '17' for awarding compensation under the head disability. The Tribunal after taking consideration of the nature of injuries, fixed the disability at 60% and awarded a sum of Rs.2,55,000/- towards disability. Due to the accident, the appellant / claimant sustained fracture in the shaft of femur on right side, fracture of both bone in the right leg and plating for shaft of femur was also done. Apart from this, the appellant / claimant suffered urethral problem. Considering the nature of injuries, the disability fixed by the Tribunal at 60% is just and proper. However, this Court is of the considered opinion that fixing Rs.25,000/- as notional income per year is very meagre and considering the year of the accident, a sum of Rs.2,500/- per month is fixed as notional income. The age of the appellant / claimant is 25 and the proper multiplier to be adopted is 18 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Hence, disability is calculated as $\text{Rs.2,500} \times 12 \times 18 \times 60\% = \text{Rs.3,24,000/-}$. Since Rs.2,500/- is fixed as notional income per month, the loss of income for 9 months awarded by the Tribunal at Rs.18,000/- is hereby enhanced to Rs.22,500/-. The Tribunal has not awarded any amount under the heads extra nourishment, attender's charges and damage to clothes and hence, Rs.5,000/-, Rs.4,000/- and Rs.1,000/- are awarded towards them respectively. All the other heads awarded by the Tribunal are just and reasonable and therefore no interference is needed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Disability	2,55,000	3,24,000
2	Pain and sufferings	10,000	10,000
3	Transportation and Medical Expenses	10,000	10,000
4	Loss of income	18,000	22,500

5	Extra nourishment	Nil	5,000
6	Attender's charges	Nil	4,000
7	Damage to clothes	Nil	1,000
	Total	Rs.2,93,000/-	Rs.3,76,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,93,000/- is hereby enhanced to Rs.3,76,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. However, it is made clear that the appellant is not entitled for the interest for the delay period of 1524 days, from 90 days after the decree till the date of numbering of the appeal, vide order dated 07.12.2011 in M.P.No.1 of 2011 in C.M.A.No.SR40056 of 2011. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The first and third respondents are directed to deposit the enhanced award amount now determined by this Court jointly and severally along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.852 of 2003 on the file of the Motor Accidents Claims Tribunal/ Additional Sub Judge, Tiruvanamalai within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

1.The Motor Accidents Claims Tribunal/
Additional Sub Judge
Tiruvanamalai.

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

+1 cc to M/s.D.Baskaran, Advocate Sr.No. 103278

+1 cc to M/s.M.Malar, Advocate Sr.No. 103716

+1 cc to M/s.G.Udayasankar, Advocate Sr.No. 103466

C.M.A.No.3759 of 2011

AK (CO)

RMP (04/12/2020)