

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2760 of 2015

Krishnamoorthy

... Appellant

Vs.

1.Latha

2. The Divisional Manager,
New India Assurance Company Ltd,
Arcot Woodlands Complex, Imperial Road,
Cuddalore.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.12.2012 and made in M.C.O.P.No.1908/2008 on the file of the Motor Accident Claims Tribunal and Learned II Additional Sub-Judge, Cuddalore.

For Appellant : Mr.A.Arasu Ganesan

For Respondents : Mr.P.G.Padmanaban for R2.
R1- Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.1908 of 2008, dated 07.12.2012, on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Cuddalore.

2. The appellant herein, who is the claimant, has filed M.C.O.P.No.1908 of 2008, on the file of the Motor Accidents Claims Tribunal, II Additional Sub-Judge, Cuddalore claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in a road accident which took place on 21.04.2008 at about 10.30 a.m., when the petitioner was riding his bicycle to go to his working place, by keeping the extreme left side of the road Vazapattu to Kalingikuppam cross road, at Melpattampakkam, near Sri Anjanayar Koil, the 1st respondent's bus (Raja Rajeswari) came from the opposite direction at great speed in a rash and negligent manner without making horn, dashed against the petitioner's bicycle and caused the accident. As a result, the petitioner sustained grievous injuries on his right shoulder and all over his body. Immediately he was admitted in the Krishna Hospital, Cuddalore

and treated as inpatient for 6 days and then for better treatment he was referred to Abirami Hospital for Orthopedic Surgeon. Due to the accident, the petitioner could not do his normal work. The Insurance Company in their counter statement, denied the mode of accident and the sum claimed on compensation as excessive.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the first respondent and as insurer of the 1st respondent's vehicle, the second respondent/New India Insurance Company is directed to pay the compensation of a sum of Rs.45,200/- to the claimant.

4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and following exhibits were marked:

- (a)Ex.P1 : Copy of FIR
- (b)Ex.P2 : Copy of Motor Vehicle Accident Report
- (c)Ex.P3 : Copy of Accident Register issued by Krishna Hospital, Cuddalore.
- (d)Ex.P4 : Discharge Summary issued by Krishna Hospital, Cuddalore.
- (e)Ex.P5 : Copy of Driving license of the 1st respondent's vehicle.
- (f)Ex.P6 : Copy of Insurance Policy
- (g)Ex.P7 : Copy of R.C.Book
- (h)Ex.P8 : Copy of Driving license of the petitioner
- (i)Ex.P9 : X-ray
- (j)Ex.P10 : Disability Certificate given by P.W.2 to the petitioner

5. On the side of the respondents, none were examined and no exhibits were marked.

6. Aggrieved by the award, the claimant has filed the present appeal for enhancement.

7. The learned counsel for the petitioner submitted that the Trial Court ought to have taken the assessment of the monthly income at Rs.3000/- per month instead of Rs.6750/- per month, though the doctor had given disability certificate for 25% disability, the trial Court erroneously considered only 5% as disability without any basis. The discharge summary was also not considered which was also marked as a document, which clearly shows that the petitioner had sustained grievous injury and also sustained fracture in his right side collar bone namely "Auromica Process Bone". The compensation of Rs.45,200/- towards a case of grievous hurt is very low and unsustainable and the award was not assessed in a legal manner, in particular circumstances of the case and hence the

award passed by the Trial Court is erroneous and has to be enhanced.

8. The learned counsel appearing for the second respondent/ New India Assurance Company contended that the accident occurred only due to the rash and negligent driving of the injured person. Further, his grievance is that he denies all the allegations of the petitioner made in the claim petition. The amount of compensation claimed is highly excessive.

9. On perusal of records it is seen that the particulars has been furnished by the claimant regarding the age, income and occupation of the injured and the same have been taken into consideration by the Tribunal and this Court also concur with the findings of the Tribunal. It is seen that the petitioner was working as a Tractor driver and earning Rs.6,750/- p.m. The Tribunal has taken the monthly income at Rs.3,000/- for 12 months, calculating the disability i.e., $3000 \times 12 = 36,000 \times 14 \times 5/100 = 25,200/-$. This Tribunal has awarded a sum of Rs.6,000/- towards Loss of Income, Rs.5,000/- towards Pain and Sufferings, Rs.4,000/- towards Medical Expenses, Rs.3,000/- towards Extra Nourishment and Rs.2,000/- towards Conveyance expenses and the same are confirmed by this Court. In view of the disability assessed by the Doctor at 25%, this Court inclined to take disability at 10% and consequently enhance the sum awarded under the head disability i.e., $54,000 \times 14 \times 10/100 = 75,600$ by taking monthly income at Rs.4,500/-. This Court has fixed the loss of income (Rs.4,500/- per month) for 12 months at Rs.54,000/- that has to be properly calculated as $4500 \times 12 = 54,000 \times 14 \times 10/100 = 75,600/-$. Thus, the compensation awarded by the Tribunal is modified as follows:

10. Hence the total compensation payable to the claimant is as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Permanent Disability at 5%	Rs.25,200/-	Rs.75,600/-
2.	Loss of Income	Rs.6,000/-	Rs.6,000/-
3.	Pain and Sufferings	Rs.5,000/-	Rs.5,000/-
4.	Medical Expenses	Rs.4,000/-	Rs.4,000/-
5.	Extra Nourishment	Rs.3,000/-	Rs.3,000/-

6.	Conveyance Expenses	Rs.2,000/-	Rs.2,000/-
	Total	Rs.45,200/-	Rs.95,600/-

11. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.45,200/- is enhanced to Rs.95,600/-. The second respondent/New India Assurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ssb

To

1. The Learned II Additional Sub-Judge,
Cuddalore.

2. The Motor Accident Claims Tribunal
Chennai.

+1cc to Mr.P.G.Padmanaban, Advocate SR.No.51002

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SS (CO)
GMY (03/01/2020)

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