

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE TMT. JUSTICE R.HEMALATHA

C.M.A.No.2483 of 2013

Sevathan

.. Appellant/Petitioner

Vs.

1.M.Nallasamy

2.The Branch Manager

National Insurance Company Ltd.,

Branch Office, Bhavani Post,

Erode District.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 05.12.2008 made in MCOP No.1272 of 2006 on the file of the Motor Vehicle Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.Mukund R.Pandian

For R2 : Mr.S.Vadivel

For R1 : No appearance

J U D G M E N T

The appellant is the claimant in MCOP No.1272 of 2006 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. He filed the claim petition under Section 166 of the Motor Vehicles Act claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the road accident that took place on 20.08.2005.

2. The brief case of the claimant is that on 20.08.2005, at about 7.00 a.m., he was riding his TVS XL bearing Regn.No.TCD 6421 and was proceeding from Kaduchettipatty to Kulikaadu. When he was nearing Kaduchettipatti Junction road, a speeding lorry bearing Regn.No.TN28 V 7479 belonging to the 1st respondent and insured with the 2nd respondent/insurance company hit the two-wheeler as a result of which, the claimant fell down and

sustained injuries all over his body. According to the appellant/claimant, the accident occurred due to the rash and negligent driving of the driver of the lorry and that since the said lorry was insured by its owner with the second respondent/insurance company, both the 1st and 2nd respondents are jointly and severally liable to pay compensation to him.

3. The owner of the lorry, the 1st respondent herein remained absent before the Tribunal and therefore, he was set *exparte*. The second respondent/insurance company, contested the claim petition and the learned Additional District Court, Krishnagiri, after analysing the evidence on record, awarded a sum of Rs.50,000/- as compensation to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal.

4. Mr.Mukund R.Pandian, learned counsel appearing for the appellant/claimant contended that though Dr.Ashok Kumar (P.W.2) has assessed the partial permanent disability of the claimant as 35%, the Tribunal had reduced the same to 20% and awarded a meagre sum of Rs.40,000/- as compensation towards disability. He also contended that the claimant was a vegetable vendor earning a sum of Rs.4,000/- per month and therefore, he prayed for enhancement of compensation.

5. Per contra, Mr.S.Vadivel, learned counsel appearing for the 2nd respondent/Insurance Company contended that the learned Additional District Judge, Krishnagiri, after considering various aspects of case has awarded a sum of Rs.50,000/- which is a just compensation to the claimant and the same need not be disturbed at this stage and prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as 2nd respondent and perused the materials available on record. There is no representation on behalf of the 1st respondent.

7. A perusal of the records shows that the claimant was aged 42 years on the date of accident and he was a vegetable vendor. A copy of the Accident Register shows that he sustained a fracture on his left ankle and the Doctor has assessed the partial permanent disability as 35%. However, the Tribunal, without any reason, reduced the same to 20%. In fact, the Doctor has given cogent reasons for arriving at the percentage of disability. The evidence of PW2 is also clear with regard

to the disability. In the facts and circumstances of the case, the disability assessed by the Doctor at 35% seems to be correct. Though it is contended that the appellant/claimant is a vegetable vendor by profession, there is no evidence to prove that he suffered functional disability. However, he might have some difficulty in doing his business on account of the accident. Considering the facts and circumstances of this case, in the opinion of this Court, awarding a sum Rs.1,000/- per percentage towards partial permanent disability would meet the ends of justice. Thus, a sum of Rs.35,000/- is awarded towards partial permanent disability. The appellant / claimant could not have attended to his regular work on account of the accident atleast for six months. Therefore, a sum of Rs.18,000/- (Rs.3000 x 6) is awarded towards loss of income. The various heads under which the compensation is awarded to the appellant / claimant is extracted hereunder.

Srl.N o.	Description	Amount awarded by this Court Rs.
1.	Partial Permanent Disability	35,000.00
2.	Loss of income during treatment period	18,000.00
3.	Transportation	2,000.00
4.	Extra Nourishment	5,000.00
5.	Pain & suffering	10,000.00
6.	Loss of amenities	5,000.00
7.	Attender charges	2,000.00
	Total	77,000.00

8. Thus, a sum of Rs.77,000/- is awarded as compensation to the appellant/claimant which will carry interest @ 7.5% per annum from the date of petition till the date of deposit.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.50,000/- awarded by the Tribunal is hereby enhanced to Rs.77,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.77,000/- along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, to the credit of MCOP No.1272 of 2006 on the file of Additional District Judge, Krishnagiri. On such deposit being

made, the appellant / claimant is at liberty to withdraw the entire award amount alongwith interest and costs, after adjusting the amount, if any, already withdrawn, after following the due process of law. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rgr

To

1.The Additional District Judge,
Motor Accident Claims Tribunal
Krishnagiri

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

+1cc to Mr.Mukund R.Pandian, Advocate SR.No.83714

+1cc to Mr.S.Vadivel, Advocate SR.No.83684

CMA NO.2483 OF 2013

AD (CO)
GMY (07/02/2020)

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