

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3221 of 2012
and M.P.No.1 of 2011

Govindaraj Naidu @ Govindasamy ...
Appellant/Petitioner

..Vs..

- 1.Rajammal Transport,
167, Karpaga Vinayagar
Koil Street, Sembarambakkam,
Kanchipuram, Tamil Nadu 602 103.
(R1 set Exparte before Lower Court)
- 2.The National Insurance Company Limited.,
No.661, Trunk Road,
Poonamallee, Chennai - 56. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.01.2009 made in M.C.O.P.No.465 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court I, Poonamallee.

For Appellant : Ms.Y.Jayanthi Bhaskar

For Respondents : Mr.J.Chandran

JUDGMENT

The appellant is the claimant in M.C.O.P.No.465 of 2007 on the file of the Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Poonamallee. The appellant/claimant filed the above claim petition under Section 166 of Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident that took place on 18.01.2006 at about 01.15 a.m, when he was riding his bullock cart along Jawaharlal Nehru 100 feet road, Ambal Nagar, Chennai. According to him a speeding van bearing Registration No. TN - 20 - L - 7999 belonging to the first respondent hit the bullock cart from behind, as a result of which, he sustained injuries

all over his body. It is further contended by him that he was a coolie earning a sum of Rs.350/- per day, that the rash and negligent driving of the driver of the van bearing Registration No. TN 20 - L - 7999 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.

2.The owner of the van bearing Registration No.TN 20 - L - 7999 did not appear before the tribunal and therefore, he was set ex-parte. The second respondent contested the claim petition. The learned Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Poonamallee after analysing the evidence on record awarded compensation of Rs.1,30,000/- together with interest at the rate of 7.5% per annum. The award passed by the tribunal under various heads is extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Partial permanent disability	Rs.50,000/-
2.	Pain and Sufferings	Rs.10,000/-
3.	Medical Expenses	Rs.10,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Transportation Charges	Rs.10,000/-
6.	Loss of Amenities	Rs.40,000/-
Total Compensation		Rs.1,30,000/-

3.Not satisfied with the award passed by the tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Ms.Y.Jayanthi Bhaskar, learned counsel appearing for the appellant would contend that the tribunal did not award any amount towards Loss of Income especially when the claimant was hospitalized continuously for a period of three months. It is also contended by her that no amount was awarded towards attender's charges.

5.The appellant/claimant sustained the following injuries as evidenced by the Discharge Summary (Ex.P3):

*L/E - Lacerated injury 6 x 3 cm over the Right leg anteromedial.

- *aspect lower part exposing underlying bone & muscle.
- *Abnormal mobility at Right lower leg.
- *Dorsalis pedis post tibial pulu fell.

6.Dr.Saichandran (P.W.2) has assessed the Partial Permanent Disability as 50% and issued a Disability Certificate (Ex.P5). The tribunal after considering the oral evidence of P.W.2 as well as the Disability Certificate (Ex.P5), awarded a compensation of Rs.50,000/- for Partial Permanent Disability.

7.A perusal of the injuries sustained by the appellant/claimant clearly shows that there is no functional disability and therefore multiplier method is not warranted as far as the present case is concerned.

8.Since the accident took place in the year 2009, the tribunal was right in awarding Rs.1000/- per percentage. The tribunal has also awarded a sum of Rs.40,000/- towards Loss of Amenities and Rs.10,000/- each under the heads Medical Expenses, Transportation Charges, Pain and Sufferings and Extra Nourishment.

9.It is pertinent to point out that the claimant took treatment in a Government Hospital and no Medical Bills were produced by him. Hence, awarding of Rs.10,000/- towards medical expenses by the tribunal is not sustainable.

10.The contention of the appellant/claimant is that he was working as a coolie earning a sum of Rs.350/- per day. Since, no documentary evidence was adduced by the appellant/claimant, the notional income of the appellant/claimant is fixed at Rs.4500/- per month. Since, the appellant/claimant would not have been in a position to attend to his day to day activities on account of the accident atleast for six months, a sum of Rs.27,000/- (Rs.4500 x 6) is awarded towards Loss of Income. Apart from the above amount, the appellant/claimant is entitled to a sum of Rs.2000/- towards attender's charges. The enhanced compensation amount awarded under various heads is extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Partial permanent disability	Rs.50,000/-
2.	Pain and Sufferings	Rs.10,000/-

S.No.	Head	Amount granted (Rs.)
3.	Loss of Income	Rs.27,000/-
4.	Extra Nourishment	Rs.10,000/-
5.	Transportation Charges	Rs.10,000/-
6.	Loss of Amenities	Rs.40,000/-
7.	Attenders Charges	Rs.2000/-
Total Compensation		Rs.1,49,000/-

The compensation of Rs.1,49,000/- shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connection Miscellaneous Petition is closed.

(ii) The award amount is enhanced from Rs.1,30,000/- to Rs.1,49,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The respondents are jointly and severally liable to pay the enhanced compensation amount (less the amount already deposited by them) together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.465 of 2007 dated 30.01.2009 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court I, Poonamallee within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the appellant/claimant, is entitled to withdraw the same after following due procedure of law.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rna

To

The Additional District and Sessions Judge,
Fast Track Court I,
Poonamallee.

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

+2 cc to M/s.J.Mahalingam, Advocate Sr.No.699

C.M.A.No.3221 of 2012
and M.P.No.1 of 2011

CP(CO)
CSL/01.03.2019



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