

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.04.2019

Judgment Delivered on : 02.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3517 of 2012

M.Mohammed Jabir ... Appellant/Petitioner

Versus

1.V.Kanagaraj

2.The New India Assurance Co., Ltd.,
No.45, Moore Street, T.P.Cell,
V-Floor, Chennai - 1. ... Respondents/Respondents

[R1 set ex-parte before the Tribunal]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.06.2003 passed in M.C.O.P.No.5424 of 1999 on the file of the Motor Accident Claims Tribunal, Additional District cum Session Judge, (Fast Track Court - III), Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand & Suryas
For Respondents : Mr.S.Manohar
for Mr.K.Vinod (for R2)
: Ex-parte - R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant aggrieved against the award dated 30.06.2003 made in M.C.O.P.No. 5424 of 1999 on the file of the Motor Accidents Claims Tribunal, Additional District cum Session Judge, (Fast Track Court - III), Chennai.

2.The brief facts, which are necessary to decide the appeal, and the relevant particulars, are as follows:-

On 16.07.1998 at 11.00 hours, the claimant was riding his two wheeler bearing Registration No.A.H.U-8412, which was proceeding from South to North direction, at that time, a Lorry bearing Registration No.TCE-7307, was coming in the same direction on the same road, which was driven by its driver in a rash and negligent manner and hit against the claimant's two wheeler from behind. Due to the impact, the claimant was thrown out of the vehicle and sustained multiple grievous injuries all over the body. According the claimant, the accident occurred only due to the rash and negligent manner of driving of the

driver of the Lorry. Therefore, the claimant filed the above said claim petition in M.C.O.P.No.5424 of 1999 before the Tribunal, claiming a sum of Rs.6,00,000/- as compensation.

3.Before the Tribunal, the claimant examined himself as PW.1 besides examining one Dr.Gopalan and Dr.Rajappa as PW.2 & PW.4 and fourteen documents were marked as Exs.P1 to P14. On the side of the respondents neither oral nor documentary evidence was adduced.

4.After analysing both the oral and documentary evidence, the Tribunal awarded a sum of Rs.2,99,900/- as compensation. Not being satisfied with the quantum of compensation, the claimant/appellant herein has preferred this present appeal.

5.The factum of the accident and the rash and negligent driving on the part of the driver of the Lorry are not in dispute. Accordingly, in this regard the findings of the Tribunal are hereby confirmed.

6.It is seen from the evidence that PW.4/Rajappa had issued Ex.P11/wound certificate of the claimant by fixing the disability at 40%. Based on Ex.P6/disability certificate of PW.2 and Ex.P7/CT Scan, and Ex.P1/discharge summary issued by the Appollo Hospital. PW.2/Doctor has categorically stated that the claimant suffered Center portion of the Brain has been moved towards left side; that the front portion of the Brain was found to be swollen. PW.2 has also stated that 11th nerve of the head was worn out and that the claimant was not able to move his neck properly. PW.2 has also opined that due to the above disability, the claimant is often suffering head ache and giddiness, after that, he assessed the disability of the claimant at 40%.

7.Accordingly, the disability was fixed at 30% by the Tribunal as partial permanent disability. PW.4/Doctor, who deposed initially that PW.1/claimant had took treatment in the Appollo Hospital from 16.07.1998 to 22.07.1998. Thereafter, he was referred to Government Ophthalmic Hospital at Egmore. It is opined that he cannot hold the head grip at right side and at examination, the fourth nerve of the claimant on the left side eye was not properly working and the image is doubling in vision. Hence, the disability of the claimant's was fixed at 30% as partial permanent disability, due to which, his vision was diminishing on the left eye and to that effect Ex.P11/disability certificate was marked.

8.Taking into consideration, that as per Exs.P6 & P7, the disability was fixed by the Doctor/PW.2 at 40% and another Doctor/PW.4, who had issued the disability certificate/Ex.P11, fixed the disability of the claimant at 30% for diminishing on the left eye vision. But, the Tribunal has taken the disability of the claimant at 30% as to the whole body.

9.Considering the facts and circumstances, the compensation award of the Tribunal is re-assessed as under: The Tribunal has awarded a sum of Rs.50,000/- towards loss of income during the

period of treatment; a sum of Rs.4,000/- towards Transportation; a sum of Rs.5,000/- towards Extra-nourishment. Apart from that, a sum of Rs.2,000/- was granted towards Damages to the two wheeler. As per the medical records, a sum of Rs.38,900/- was awarded, which is just and proper. Considering the period of hospitalisation, a sum of Rs.25,000/- towards pain and sufferings and for the damages to Brain and Loss of Eye vision, a sum of Rs.1,25,000/- was granted. Having regard to the nature of injuries sustained by the claimant, a sum of Rs.50,000/- was granted towards Loss of earning capacity. After going through the evidence of Ex.P5/Medical Bills of the Appollo Hospital, Ex.P6/Disability Certificate and Ex.P12/Salary certificate, the Tribunal has fixed the claimant's notional income at Rs.5,000/- per month and also for the treatment taken by him, for 10 months, a sum of Rs.50,000/- was granted.

10.Considering the nature of the injuries and the disability suffered by the claimant and taking into consideration the date of the accident being 16.07.1998, this Court is of the considered view that the amount awarded by the Tribunal on other heads of compensation are just and reasonable and as per Ex.P5/medical bills and for pain and suffering granted is also just and fair and the same is hereby confirmed.

11.Taking into consideration the fact that he was under in-patient treatment for more than 7 days in the Appollo Hospital and thereafter, he took 27 days treatment from 11.08.1998 to 07.09.1998, this Court feels to award a sum of Rs.20,000/- towards Attender charges and a sum of Rs.20,000/- towards Loss of Amenities. Except these modifications, other the compensation awarded by the Tribunal under other heads remains unaltered. Accordingly, the compensation is modified and enhanced as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.1,25,000/-	Rs.1,25,000/-
Loss of Income	Rs.50,000/-	Rs.50,000/-
Transport to hospital	Rs.4,000/-	Rs.4,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Damage to the two wheeler	Rs.2,000/-	Rs.2,000/-
Medical expenses	Rs.38,900/-	Rs.38,900/-
Pain and suffering	Rs.25,000/-	Rs.25,000/-
Loss of earning capacity	Rs.50,000/-	Rs.50,000/-
Attender charges		Rs.20,000/-
Loss of Amenities		Rs.20,000/-
Total	Rs.2,99,900/-	Rs.3,39,900/-

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12.In the result,

(i) this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.2,99,900/- awarded by the Tribunal is hereby enhanced to Rs.3,39,900/-.

(ii) the respondents are jointly and severally directed to deposit the entire enhanced compensation amount as determined by this Court, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) on such deposit, the appellant/claimant is entitled to withdraw the same, by making necessary application before the Tribunal.

(v) the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Motor Accident Claims Tribunal,
Additional District cum Session Judge,
(Fast Track Court - II), Chennai.
- 2.V.Kanagaraj,
S/o.Velusamy,
No.2, Gandhi Nagar III Street,
Madipakkam, Chennai - 600 091.
3. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.Anand and suryas, Advocate, SR.66372

+1 cc to Mr.K.Vinod, Advocate, SR.66396.

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