

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.858 of 2015

Velusamy

... Appellant/Claimant

Vs.

1.S.Ramakrishnan

2 A.Inayathullah

3. ICICI Lombard General Insurance Co. Ltd.,
First Floor, Vigneshwar Crosta,
Avinasi Road, Pappanaickkanpalayam,
Coimbatore. ... Respondents/Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the judgment and decree dated 14.11.2014 made in
MCOP.No.81 of 2010, on the file of the Motor Accidents Claims
Tribunal (Sub Court), Perundurai.

For Appellant : Mr.S.Kaithamalai Kumaran

For R1 : No appearance

For R3 : Mr.K.Poomalai

JUDGMENT

The facts of the case are that on 08.01.2010 at about 02.00 am, the appellant/claimant was travelling in the Tractor bearing Reg.No.TN- 45-5972. One Saminathan was driving the tractor on the Coimbatore - Trichy Road. When the tractor reached near Vadamalaipalayam Pirivu, the lorry bearing Reg.No.TN-33-K-9144 belonging to the second respondent and insured with the third respondent, came in a rash and negligent manner at high speed and dashed against the tractor. Due to the impact, the appellant sustained grievous injuries. The appellant filed a claim petition, claiming a sum of Rs.5,00,000/- as compensation before the Tribunal. On consideration of the materials and

evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and awarded a total compensation of Rs.1,26,400/- with interest at 7.5% per annum from the date of petition.

2.Challenging the same, the appellant has come up with this appeal for enhancement of compensation.

3.The learned counsel for the appellant/claimant has submitted that the Tribunal has awarded a lesser sum of Rs.56,000/- towards 28% permanent disability and the same needs to be enhanced. The learned counsel further submitted that the compensation awarded by the Tribunal towards other heads are meagre. He also submitted that the Tribunal did not consider the gravity of injuries suffered by the appellant/claimant, while awarding the compensation.

4.Per contra, the learned counsel for the third respondent/ insurance company has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the materials available on record, carefully.

6.This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal on negligence as well as the liability of the third respondent insurance company to pay compensation.

7.As regards the quantum of compensation awarded by the Tribunal, the appellant/ claimant has been examined as P.W.1 before the Tribunal. He deposed before the Tribunal that he was aged about 33 years and was earning a sum of Rs.11,000/- per month as a driver of JCB; that he initially took treatment in the Government Hospital, Tirupur and thereafter, he was admitted in Erode Ortho Centre, Erode from 08.01.2010 to 18.01.2010. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 38% permanent disability. Ex.P12 is the Disability Certificate and

Exs.P10 and 11 are X-rays. But the Tribunal has misinterpreted the percentage of disability fixed by the doctor and reduced it to 28%. Taking note of the injuries suffered by the claimant and the facts and circumstances of the case, it would be appropriate to retain the percentage of disability fixed by P.W.2-Doctor at 38%. If that is done, the compensation awarded by the Tribunal towards permanent disability works out to Rs.76,000/-. Accordingly the amount awarded by the Tribunal towards permanent disability stands modified to Rs.76,000/-. Further, even though the claimant has submitted medical bills to the tune of Rs.29,580/-, the Tribunal has awarded only a sum of Rs.10,400/- on the ground that the original bills have not been filed. Taking note of the nature of injuries and the period of treatment undergone by the claimant, this Court is of the considered view that awarding a sum of Rs.20,000/- in addition to the amount awarded by the Tribunal towards medical expenses would meet the ends of justice. Accordingly the amount awarded by the Tribunal towards medical expenses stands modified to Rs.30,400/-. Further, it would be appropriate to award a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards other heads are reasonable and hence the same are confirmed. The details of the modified compensation are as follows:

Heads	Amount (Rs.)
Loss of earning during the treatment period	15,000/-
Medical Expenses	30,400/-
Transportation	5,000/-
Extra Nourishment	5,000/-
Permanent disability at 38%	76,000/-
Pain and suffering	25,000/-
Loss of Amenities	10,000/-
Total	1,66,400/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,66,400/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

8.The appeal is allowed to the extent indicated above. No costs. The third respondent/Insurance Company is directed to deposit the modified amount of compensation, as ordered above, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

av/km

To

1.The Motor Accidents Claims Tribunal,
The Sub Court, Perundurai.

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

+1cc to Mr.K.Poomalai, Advocate Sr.95475

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.95507

C.M.A.No.858 of 2015

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