

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.894 of 2015

Thangavel

.. Appellant / Claimant

Vs.

1. M/s. Axis Carrier & Logistics Pvt., Ltd.,
OTPC Compound,
Purna Village, Bhiwandi - 421 302,
Thane District, Maharashtra State.
2. ICICI Lombard General Insurance,
Zenith House, Keshavrao Khale Marg,
Mahalakshmi, Mumbai - 400 034. .. Respondents/ Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.03.2014 made in M.C.O.P.No.805 of 2009, on the file of the Motor Accidents Claims Tribunal, Special Court No.1, Salem.

For Appellant : Mr.T.Murugamanickam

For R1 : No appearance

For R2 : Mr.Poomalai

J U D G M E N T

The facts of the case are that on 12.02.2009 at about 11.15 am, the appellant was waiting with his motorcycle bearing Registration No.TN-27-J-3083 on the Bangalore to Kondalampatty Bye-pass Road, near Arutzhothi Diesel Works. At that time, the trailer lorry bearing Reg.No. MH-04-BU-1338 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the appellant. Due to the said impact, the appellant sustained grievous injuries. Stating that the accident had occurred due to the carelessness and negligence on the part of the driver of the trailer lorry, he filed a claim petition claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidence available on record,

the Tribunal has fixed the contributory negligence at 50% each on the appellant/claimant and the driver of the trailer lorry and quantified the total compensation at Rs.2,56,000/- with interest at the rate of 7.5% p.a., 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.40,000/- towards permanent disability; that the compensation awarded under other heads are also very meagre and hence, the compensation awarded by the Tribunal needs substantial enhancement.

4.Per contra, the learned counsel for the second 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 second respondent and perused the materials available on record.

6.This appeal is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question on negligence and the liability of the second respondent insurance company to pay compensation.

7.The appellant/claimant was examined before the Tribunal as P.W.1, who deposed that he was 54 years old and was earning a sum of Rs.10,000/- per month as a power loom weaver; that he sustained grievous injuries on his left leg and permanently disabled; that he initially took treatment in the Vinayaga Mission Hospital, Salem as in-patient from 12.02.2009 to 21.02.2009. The doctor, who treated the appellant/claimant, was examined as P.W.2. According to him, the appellant/claimant sustained 30% permanent disability. Ex.X1 is the Disability certificate and Ex.X2 is the X-Ray. Though PW2 doctor assessed the permanent disability sustained by the appellant/claimant at 30%, the Tribunal has reduced the same to 20% and awarded a sum of Rs.40,000/- at the rate of Rs.2000/- per percentage of disability, which, according to this Court, is low. Taking note of the evidence of the doctor and the nature of the injuries suffered by the appellant/ claimant, this Court is inclined to take the entire percentage of disability assessed by the doctor. If that is done, the compensation towards permanent disability works out to Rs.60,000/-. Accordingly, the amount awarded by the

Tribunal towards permanent disability stands modified to Rs.60,000/-. It would also be appropriate to enhance the compensation awarded by the Tribunal towards pain and suffering to Rs.50,000/-. The amounts awarded towards other heads are reasonable and hence the same are confirmed. Thus, the appellant / claimant is entitled to the modified compensation of Rs.3,06,000/- with interest at the rate of 7.5% per annum from date of claim petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

8.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Since 50% contributory negligence has been fixed on the driver of the trailer lorry, the second respondent/Insurance Company/insurer of the trailer lorry is directed to deposit 50% of the modified amount of compensation, as ordered above, with proportionate interest and costs, 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 VIII)

//True Copy//

Sub Assistant Registrar

av/km

To

1. The Special Judge No.I
Motor Accidents Claims Tribunal,
The Special Court No.1, Salem.

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

1 cc to Mr.K.Poomalai, Advocate, Sr. 91564

1 cc t Mrs.Zeenath Begam, Advocate, Sr. 91068

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BR (CO)

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