

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA
C.M.A.No.3735 of 2013

M.Raju

... Appellant/ Petitioner
.Vs.

1.K.L.Vetrivel

2.The Branch Manager,

Iffco Tokio General Insurance Company Limited,
Branch Office, O.K.S. Building,
Near I.T.Office, College Road,
2nd Cross, Thiruppur - 641 602.... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.09.2011 passed in M.C.O.P.No.433 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode.

For Appellant : Mr.R.Nalliyappan
For R1 : No appearance
For R2 : Mr.S.Arunkumar

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.433 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 22.08.2009.

2. The case of the claimant is that on 22.08.2009, he was a pedestrian on Perundurai - Erode road and at about 08.00 P.M., when he was nearing Veerappampalayam Junction, a speeding motorcycle bearing Registration No. TN 33 AA 3772 hit him, as a result of which, he sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the Iffco Tokio General Insurance Company Limited, the owner and insurer of the motorcycle are jointly and severally liable to pay compensation.

3. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Erode, after analysing the evidence on record, awarded a compensation of Rs.79,000/- together with interest at the rate of 7.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.R.Nalliyappan, learned counsel appearing for the appellant / claimant contended that though Dr.K.Periyasamy (P.W.2) had assessed the partial permanent disability as 22%, the Tribunal awarded a very meagre amount of Rs.79,000/- towards compensation, especially, when the claimant had sustained a fracture of his left leg and an operation was also performed. He therefore prayed for enhancement of compensation.

5. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent / Iffco Tokio General Insurance Company Limited contended that the Tribunal after considering all the aspects of the case awarded a just compensation of Rs.79,000/- and the same need not be disturbed at this stage.

6. No appearance on behalf of the first respondent.

7. A perusal of the discharge summary (Ex.P8) shows that the claimant has sustained the following injuries:

- (i) Contusion C⁻ deformity Left leg
- (ii) Abrasion in Left upperarm
- (iii) Abrasion in Left elbow
- (iv) Abrasion in Left forearm
- (v) Abrasion in Left hand
- (vi) Abrasion in Left side forehead
- (vii) Abrasion in Right knee
- (viii) Abrasion in Left ear lobe
- (ix) Abrasion in Right ankle

The treatment given to the claimant is extracted hereunder:

"(i) Patient came to L.K.M. Hospital on 23.08.2009 C⁻ fracture both bones in Left leg. The limb immobilised C⁻ AK splint and kept elevated. All the wounds washed C⁻ normal and betadine.

(ii) On 24.08.2009 under spinal anaesthesia C⁻ thouniquet control and C-arm guidense closed reduction of the fracture obtained and fixed C⁻ Atlas nail and bolt.

(iii) Post operative period uneventful. SR done and patient discharged on 04.09.2009."

Since the claimant is a mason, adopting multiplier method is warranted in the present case as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.K.Periyasamy (P.W.2) has assessed the partial permanent disability as 22%. Since the disability of 22% cannot be for the whole body, 10% disability is taken up for calculating

"loss of earning capacity". Since the appellant / claimant was aged 34 years on the date of the accident, the proper multiplier to be adopted in the instant case is 15, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the claim petition, it is contended that the claimant was earning a sum of Rs.9,000/- per month. No income proof was adduced by the claimant. Since the accident took place in the year 2009, a sum of Rs.4,500/- is fixed as notional monthly income of the claimant. The loss of earning capacity is calculated as follows:

Loss of earning capacity = Rs.4,500/- X 12 X 15 X 10/100 = Rs.81,000/-

8. On account of the accident, the claimant would not have been in a position to attend to his regular work atleast for 6 months and therefore, a sum of Rs.27,000/- (Rs.4,500/- x 6 months) is awarded towards "loss of income". The claimant produced medical bills to the tune of Rs.29,191/- and the same is awarded towards medical expenses. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.81,000/-
2.	Medical expenses	Rs.29,191/-
3.	Loss of income	Rs.27,000/-
4.	Pain and sufferings	Rs.10,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Transportation	Rs.5,000/-
7.	Attender's charges	Rs.2,000/-
8.	Damage to clothes	Rs.500/-
Total		Rs.1,59,691/-

9. The quantum of compensation awarded by the Tribunal is enhanced from Rs.79,000/- to Rs.1,59,691/-, which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.79,000/- to Rs.1,59,691/-.

(iii) The respondents 1 and 2 are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.1,59,691/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of

claim petition till the date of deposit to the credit of M.C.O.P.No.433 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Erode, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Principal Sub Court,
Erode.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

+lcc to Mr.S.Arunkumar , Advocate SR.No. 35634

+lcc to Mr.R.Nalliyappan , Advocate SR.No. 95437

C.M.A.No.3735 of 2013

A.SK(15/07/2020)