

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3772 of 2013

Sivakumar ... Appellant/Petitioner

Vs

- 1 V.Padmaja
- 2 The united India Insurance Company Ltd.,
Post Box No.28,
No.12003-A, Old Bangalore Road,
Hosur. ... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and decree dated 08.06.2010 in MCOP No.1471 of 2006 passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.M.Sriram
For 2nd respondent : Mrs.I.Malar
For 1st respondent : Notice served - No appearance

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Krishnagiri in M.C.O.P.No.1471 of 2006, dated 08.06.2010.

2. It is the case of the appellant that on 15.06.2005 at about 7.45 A.M, the appellant/claimant was riding a bicycle at Pariyur Diversion Road, Krishnagiri to Chennai N.H. When he was proceeding towards Krishnagiri town in the left side of the road, on the same direction, the first respondent was driving a Tempo bearing Registration No.TN 29 L 9651 belonging to him, insured with the second respondent, in a rash and negligent manner, dashed against the appellant. Due to the impact, the appellant thrown away and sustained grievous injuries and thereafter, he was admitted in the Government Hospital, Krishnagiri as inpatient. Subsequently, he was admitted in St.

John's Medical College Hospital, Bangalore for further treatment. Hence, the appellant filed a claim petition before the Tribunal against the driver cum owner of the offending vehicle and its insurer, claiming a sum of Rs.8,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his claim, the appellant has examined two witnesses viz., P.W.1 and P.W.2 and marked as many as 10 documents viz., Exs.P1 to P10. On the side of the respondents, there was no witness examined and there was no evidence adduced.

4. After analyzing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Tempo. Hence, the Tribunal has awarded a sum of Rs.1,25,939/- as compensation to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal.

6. The learned counsel for the appellant even though raised various grounds in the appeal for enhancement of compensation, at the time of arguments, he contended that the appellant was a building contractor and due to the accident, he sustained grievous injuries and he could not able to do any work. The compensation awarded by the Tribunal a sum of Rs.1,25,939/- is very meager. The learned counsel for the appellant contended that the accident took place on 15.06.2005. The appellant was admitted in hospital from 15.06.2005 to 27.06.2005 as in patient and underwent surgery. The Medical Board has assessed the disability at 35%. But Tribunal has reduced the same at 30% and awarded very meager amount towards disability. The Tribunal has not awarded any amount towards loss of amenity and attender charges and the award amounts towards transportation, extra nourishment and pain and sufferings are too low and hence, the learned counsel prayed for enhancement of the compensation.

7. Per contra, the learned counsel appearing for the respondent/ Insurance Company submitted that the driver of the tempo has not anticipated that the rider of the bicycle would cross the road suddenly. However, he applied sudden brake to avoid dashing on the petitioner. But the tempo dashed the appellant and sustained simple injuries. The appellant himself responsible for the accident and there is no fault on the part of the driver. The nature of injuries and treatment taken by the appellant was considered in detail and the compensation awarded by the Tribunal is not meager and there is no necessity to enhance the amounts and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the respondent and also perused the available materials on record before this Court.

9. From the materials on record, it is seen that P.W.2 Doctor has certified that the appellant suffered 35% of disability. The Tribunal considering the evidence of P.W.2, came to the conclusion that the percentage of disability certified by P.W.2 Doctor is excessive. The Tribunal independently considering the Accident Register, disability certificate, X-ray and evidence of P.W.2, held that the percentage of disability is 30% and awarded Rs.60,000/- towards permanent disability. The Tribunal has given valid reason for reducing the percentage of disability to 30% and awarding Rs.60,000/-. There is no error in the said reasoning. A sum of Rs.13,500/- granted by the Tribunal for loss of income is meager. Therefore, this Court is fixed the monthly income at Rs.4,500/- and enhanced the amount at Rs.18,000/- (Rs.4,500X4 months) towards loss of income. Considering the nature of injuries and treatment taken by the appellant, the appellant is entitled for a sum of Rs.5,000/- towards attender charges and Rs.5,000/- towards loss of amenities. The amount of Rs.5,000/- towards transportation and extra nourishment passed by the Tribunal is too meager. Therefore, this Court is inclined to modify the amount of Rs.5,000/- towards transportation and extra nourishment each. The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Permanent disability	60,000/-	60,000/-
2.	Medical Bills	22,439/-	22,439/-
3.	Loss of Income	13,500/-	18,000/-
4.	Pain and sufferings	25,000/-	25,000/-
5.	Transportation	5,000/- (including extra nourishment)	5,000/-
6.	Extra nourishment	---	5,000/-
7.	Attender charges	---	5,000/-

8	Loss amenities	of	---	5,000/-
	Total		1,25,939/-	1,45,439/- rounder off to 1,45,440/-

10. With the above modification, this appeal is partly allowed. The first and second respondents are jointly and severally liable to pay compensation of Rs.1,45,440/- to the appellant with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight 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 award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
cum Chief Judicial Magistrate,
Krishnagiri.

Copy to

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

+1cc to M/s.Mukund R.Pandiyan, Advocate Sr.102092
+1cc to M/s.T.Ravichandran, Advocate Sr.102172

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