

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2019

CORAM

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.500 of 2013

Raja Dhandapani

... Appellant

- Vs -

1. Proprietor,
M/s.Safe Transport,
1st Floor, Gurumurthy Reddy Building,
G.P.Palya, Hosur Main Road,
Bangalore-560 068.
2. The Branch Manager,
United Insurance Company Limited,
Rayapuram Branch,
Chennai-600 013.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 17.10.2011 made in M.C.O.P.No.777 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondents : Mr.S.Arun Kumar
for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, who was the claimant before the Court below is aggrieved by the award dated 17.10.2011 made in M.C.O.P.No.777 of 2003 by the Motor Accident Claims Tribunal/Principal Subordinate Judge, Krishnagiri on the ground that the Tribunal had erred in awarding very meagre amount as compensation for loss of income and pain and suffering.

2. The case of the appellant is that he was owning a Tempo bearing Registration No.KA-02-A-7814 and doing a business of contract carriage with a courier cargo and logistics Company and Transport materials. On 05.02.2003, while he was returning from

Chennai to Bangalore at Sumaithangi (4km west) around 12.00 midnight from east to west, a lorry bearing registration no.KA01A7374 belonging to the first respondent insured with the United India Insurance Company Limited, Chennai, came in the opposite direction (i.e.,) west to east at an uncontrollable speed and dashed against the appellant's Tempo and caused the accident. Due to the said accident, the appellant/claimant sustained grievous injuries in the right knee with fracture of patella quadriceps rupture with type III a both bone fracture right leg. His right knee was opened and both the bones were exposed out and other lacerated injuries and also in the left leg nail has been removed and laceration in the left knee and was admitted in the Government Hospital, Walajah and later, shifted to CMC Hospital, Vellore on 06.02.2003. He became bed ridden and with attendant's help, the claimant had to move for his basic needs. A case was registered against the driver of the lorry for the offences under Sections 279 and 338 of IPC and he prayed for awarding compensation of Rs.10,00,000/-.

3. The second respondent herein filed a detailed counter denying all the allegations and submitted that it is the appellant, who was driving the Tempo in a rash and negligent manner without proper driving license, hit the lorry, due to which, he sustained injuries. He also submitted that there was a contributory negligence on the part of the appellant and they prayed for fixing the liability on him.

4. On the side of the appellant/claimant, two witnesses were examined and Exs.A1 to A9 were marked. On the side of the respondents, neither any witness has been examined nor any exhibit was marked. The Court below, after considering the materials on record, has come to the conclusion that the respondents jointly or severally are liable to pay compensation of Rs.5,72,100/- and directed the second respondent to deposit the same within a particular period. Aggrieved by the said judgment, the claimant preferred the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the driver of the Tempo is the appellant and he sustained grievous injuries and he is not in a position to work as a driver and prayed for enhancing the income of the appellant as he himself paid a sum of Rs.5,395/- for income tax for the financial year 01.04.2002 to 31.03.2003. The Court below fixed the income as Rs.4,000/-, which is a very meagre amount. The learned counsel further submitted that the Court below ought to have considered the income tax filed and fixed the monthly income as Rs.49,000/- to award more compensation.

6. Per contra, the learned counsel for the 2nd respondent submitted that the appellant has not produced income tax returns for a continuous period of two or three years. Mere production of one year return is not sufficient and there was no other materials to show that the appellant was earning more income than fixed.

7. Heard the learned counsel either side. Perused the entire materials available on records.

8. Considering the fact that the appellant was working as a driver, who sustained disability, which is permanent in nature, cannot drive in future, this Court is inclined to fix the monthly income of the appellant as Rs.3,000/- by applying multiplier 16 and award a sum of Rs.5,76,000/- [3000 X 12 X 16] towards Loss of earning. Regarding the disability, the Doctor has fixed at 50% and the Tribunal has rightly awarded a sum of Rs.1,00,000/- towards 50% disability and hence, this Court is not inclined to interfere with the same. For pain and sufferings, this Court is inclined to increase the same to Rs.20,000/-. Regarding attender charges, nutrition and transport, this Court is awarding a sum of Rs.10,000/- towards attender charges, a sum of Rs.10,000/- towards nutrition and a sum of Rs.10,000/- towards transport. The final amount of compensation now determined is tabulated below:-

Heads	Amount (Rs.)
Disability 50%	1,00,000
Pain and sufferings	20,000
Nutrition	10,000
Attender Charges	10,000
Loss of income [3000X12X16]	5,76,000
Transportation	10,000
Medical Expenses	39,100
Total	7,65,100

9. That apart, the respondent has not filed any documents or produced any evidence to substantiate that there is negligence on the part of the appellant. In the absence of any material, this Court is not inclined to accept the said plea of the 2nd respondent in the absence of any valid proof and the claimant has proved his case and as the vehicle has been insured with the second respondent, the second respondent is liable to compensate

the victim. The Court below has also considered the fact that the insurer has not proved any contra evidence to show that the vehicle is not insured with them and that they are not liable to compensate the victim.

9. Hence, in the above facts and circumstances, this Civil Miscellaneous Appeal is partly allowed. The second respondent is directed to deposit Rs.7,65,100/-, less if any amount already deposited, with interest at 6% per annum, from the date of petition till the date of realisation excluding the default period if any, within eight weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw same forthwith. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KMI

To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr. Mukund R. Pandian, Advocate sr 102476.

+1 Cc to Mr.S.Arun Kumar, Advocate sr 102974.

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C.M.A.No.500 of 2013

RSV(CO)

SP(18/12/2020)

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