

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.519 of 2016

G.Ramesh

.. Appellant/Petitioner

Vs.

1.A.Mohammed Nabi

2.The New India Assurance Company Ltd.,
rep. by its Branch Manager,
No.110, Gandhi Market Road,
Arni.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.04.2015 made in M.C.O.P.No.320 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

For Appellant	: Mr.P.Satheesh Kumar
For R2	: Mr.J.Chandran
R1	: Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 18.04.2015 made in M.C.O.P.No.320 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Arni.

2.Brief facts of the case:

On 07.10.2008 at about 04.15 P.M. the petitioner was proceeding as a pillion rider a two wheeler bearing Reg.No.TN-23-AA-2459 in Arni Vellore road towards Melvallam village from Vellore direction. The petitioner was riding his vehicle slowly and on the left extreme side of the road. At that time when the petitioner was nearing Melvallam village, a bus bearing Reg.No.TN-25-J-7531 which is owned by the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner with high speed and dashed on the back side of the petitioner's two wheeler. The petitioner was thrown out from the vehicle and sustained multiple injuries all over the body which has caused permanent disability to the petitioner. Thus the petitioner claimed a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the said accident.

3.The 2nd respondent/Insurance Company totally denied the mode of accident and involvement of bus bearing Reg.No.TN-25-J-7531 and also the negligence as stated by the claimant. Further, the sum claimed by the claimant under various heads are baseless and exorbitant. That the amount of compensation is fantastically excessive, abnormal and without any legal and equitable basis. Hence the application deserves to be rejected for lack of details.

4.Aggrieved over the said award, the claimant has preferred the present appeal for enhancement.

5.The learned counsel appearing for the appellant contended that the Tribunal has taken a different view of fixing negligent aspect. Inspite of the fact that the FIR and the inspection report there was a clear observation that the accident was caused due to the negligence of the driver of the 1st respondent's vehicle and the said report was also marked by the respondents herein. The Trial Court has committed an error by fixing the contributory negligence on the side of the appellant. When there is no oral and documentary evidence on the part of the respondents. Regarding the income and occupation of the claimant and his income was Rs.30,000/- per month, which is not considered by the Tribunal. Further the disability sustained by the appellant is also not properly considered by the Tribunal. On the whole the sum awarded by the Tribunal as well as the contributory negligence fixed on the appellant is not proper. Hence the order of the Tribunal has to be set aside.

6.Heard Mr.P.Satheesh Kumar, learned counsel appearing for the appellant as well as Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the Tribunal fixed 50% negligence on the appellant herein by observing the fact that at the time of accident he was under the influence of alcohol. On the side of the respondent there were no evidence and documents placed before the Tribunal to prove the same. The appellant is very much aggrieved against the observation of the Tribunal. In the absence of any relevant documents that the petitioner was under the influence of alcohol and fixed 50% contributory negligence is highly erroneous. Whereas the FIR states that the negligent driving on the part of the driver of the bus caused the accident. Hence 50% contributory negligence fixed on the appellant is set aside. Since there is no evidence and documents placed before the Tribunal to prove that the appellant was under the influence of alcohol. The Tribunal has observed the fact that the evidence of

PW2/Doctor deposed that the appellant sustained multiple injuries all over the body, with injury on left eye, left thigh, left knee and also fractures of right leg, jaw etc and also loss of teeth. Therefore, PW2/Doctor assessed the disability of the appellant at 35% and he also issued a Ex.P7/disability certificate which were marked before the Tribunal.

8.While determining the compensation towards loss of income, pain and suffering, the appellant is very much aggrieved by the calculation made by the Tribunal by taking the monthly income of the appellant at Rs.4,000/- and arrived the loss of income is not proper. Further, the respondent also argued that the multiplier method adopted by the Tribunal is proper. Hence by analyzing the evidence of PW2/Doctor and also disability sustained by the appellant it would be very much reasonable by taking the disability at 30% by awarding Rs.2,000/- per percentage and the loss of income and disability would be Rs.60,000/- (Rs.2,000/- x 30%). The sum awarded by the Tribunal towards pain & suffering, transportation and damages to articles are very reasonable. The Tribunal has not awarded any sum towards attendant charges, extra nourishment and medical bills and this Court grants a sum of Rs.5,000/- each respectively under those heads. 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.	Loss of income and disability	Rs.48,960/-	Rs.60,000/-
2.	Pain and suffering	Rs.10,000/-	Rs.10,000/-
3.	Transportation	Rs.5,000/-	Rs.5,000/-
4.	Damages to articles	Rs.1,000/-	Rs.1,000/-
5.	Extra nourishment	-	Rs.5,000/-
6.	Attendant charges	-	Rs.5,000/-
7.	Medical bills	-	Rs.5,000/-
	Total	Rs.64,960/-	Rs.91,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.64,960/- is enhanced to Rs.91,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

10.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Arni.

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

+1 CC to Mr.P.Satheesh Kumar, Advocate sr 79204.

C.M.A.No.519 of 2016

PP(CO)

SP(05/08/2020)