

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.598 of 2016

S.Sivakumar

... Appellant/Petitioner

Vs.

1.S.Manikandan

2.United India Insurance Company Limited,
PPS Complex, 1st Floor,
Mettur Main Road, Omalur Taluk,
Salem District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment made in M.C.O.P.No.1161 of 2012 dated 27.07.2015 on the file of the Motor Accident Claims Tribunal, the learned First Subordinate Judge, Salem.

For Appellants : Mr.S.P. Yuvaraj
For R2 : Mr.J.Chandran
For R1 : Served No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant against the judgment and decree made in M.C.O.P.No.1161 of 2012, dated 27.07.2015, on the file of the Motor Accident Claims Tribunal, Salem. सत्यमेव जयते

2. The claimant/injured is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

3. The brief case leading to the claim application is as follows:

On 24.06.2012, when the appellant herein/petitioner and his cousin brother went to Mettur Muniappan Koil and returned to Salem in his Hero Honda Motor-Cycle bearing Registration No. TN-30-Z-8637, near first plant, Chemplast, Metturu R.S., at that time a TATA Indica car bearing Registration No. TN-31-D-1141 came in a rash and negligent manner and hit against the

appellant herein. Due to which, the appellant herein and his cousin sustained injuries. Immediately, the appellant herein was taken to Government Hospital at Mettur and then shifted to Government Hospital, Salem, for further treatment. In connection with this accident, Karumalaikudal Police had registered a case against the driver of TATA Indica car bearing Registration No. TN-31-D-1141, in Crime No. 349 of 2001 under sections 279 and 338 of IPC. The appellant/petitioner, therefore claimed Rs.7,00,000/- as compensation under various heads.

4. The Tribunal, after perusing the documents and based on the evidence placed before it, has given its finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the TATA Indica car bearing Registration No. TN-31-D-1141 and directed the second respondent herein/Insurance Company to pay the compensation. The sum awarded by the Tribunal under various heads is as follows:

Sl.No.	Heads	Amount Awarded by the Tribunal
1.	Pain and Suffering	50,000.00
2.	Partial loss of income (6,000 x 4)	24,000.00
3.	Food and Extra nourishment	10,000.00
4.	Medical Expenses (X - ray)	300.00
5.	Transportation	700.00
6.	Disability (Rs.2,000 x 25%)	50,000.00
7.	Total	1,35,000.00

5. The appellant is very much aggrieved by the disability percentage fixed by the Tribunal at 25% against the permanent disability assessed by PW2. The Tribunal has also not taken the reasonable monthly income earned by the injured, at the time of accident. It is stated before the Tribunal that the petitioner's occupation was welding work and he was aged about 43 years and he was earning a sum of Rs.15,000/- per month. It is contended by the learned counsel for the appellant that the Tribunal ought to have awarded the compensation by way of adopting multiplier method since the appellant sustained permanent disability and with that the appellant cannot continue his avocation as the nature of avocation is a difficult one and that he cannot do it as he was doing before. The learned counsel further contended that the total compensation amount is very meagre and hence, the said award is to be enhanced.

6. Heard both sides and perused the materials available on record.

7. On a perusal of records, it is seen that the appellant sustained grievous injuries due to the accident that occurred on 24.06.2012. While determining compensation, the Tribunal has taken note of the document viz., Ex.P2/ Xerox Copy of Treatment Note Book, Ex.P3/X-ray Original, Ex.P4/Photos (Original) and Ex.X2/X-ray Original, which are very much describing the nature of injury viz., fracture in the left femur, grievous injuries on his left knee, left leg and multiple injuries all over the body. Ex.P.2 also reveals the fact that the injured was treated as inpatient from 11.07.2012 to 17.07.2012 and surgery was also done to him by fixation of plate and screw fixation in lateral femur. The evidence of PW2/Dr.K.V.Srinivasan who spoke about the nature of injuries and the disability sustained by the injured, stated that the appellant is suffering from pain at the fracture site, deformity of left thigh is seen and there is restricted movement of left Knee. The doctor assessed the disability at 35.84%, considering the difficulty of the appellant herein/injured in attending his normal work as well as considering the difficulty in the simple movement of leg. But the Tribunal has taken only 25% disability. The said fixation of 25% disability is very much opposed by the appellant and sought for fixing the disability as assessed by the doctor. It is further reiterated by the learned counsel for the appellant that the injured was earning monthly income of Rs.15,000/- by way of self employment that is welding, however, the Tribunal has taken only Rs.6,000/-.

8. Considering the fact that the petitioner/appellant herein was doing his own business of welding work, which work is having high demand, this court is of the considered view that the fixing of income at Rs.6000/- and awarding compensation to the injured, is not a just compensation and it has to be reasonably modified. Further, considering all the other attendants factors, this court is of the view that the injured necessarily requires suitable compensation in respect of all the heads. As such, the sum awarded by the Tribunal is modified as follows:

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Pain and Suffering	50,000.00	50,000.00
2.	Partial loss of income (6,000 x 4)	24,000.00	4 x 7,000= 28,000.00
3.	Food and Extra nourishment	10,000.00	15,000.00

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
4.	Medical Expenses (X - ray)	300.00	300.00
5.	Transportation	700.00	10,000.00
6.	Disability (Rs.2,000 x 25%)	50,000.00	35 x 3,000= 1,05,000.00
7.	Loss of amenities	...	15,000.00
8.	Attender charges	...	15,000.00
9.	Total	1,35,000.00	2,38,300.00

Hence, the award of the Tribunal is enhanced from Rs.1,35,000 to Rs.2,38,300/-.

9. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,35,000 to Rs.2,38,300/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/ United India Insurance Company Limited, is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer the amount to the appellant/claimant's bank account through RTGS within a period of two weeks thereon.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1.The Special Subordinate Judge No.I
Motor Accident Claims Tribunal
Salem

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

+1 CC to Mr.S.P.Yuvaraj, Advocate sr 77913.

+1 CC to Mr.J.Chandran, Advocate sr 78551.

C.M.A.No.598 of 2016

EV(CO)
SP(20/02/2020)



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