

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.07.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No.2828 of 2019

Raja

...Appellant

Vs.

1.Arjunan

2.United India Insurance Co., Ltd.,
A.K.M. Tower, 1st Floor,
No.397-1, Junction Main Road,
Salem - 636 104.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 21.12.2008 passed in MACTOP.No.5 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Chandran for R2
Exparte - R1

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 21.12.2008 made in MACTOP.No.5 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Tiruchengode.

2. Brief facts leading to the claim application are as follows:

On 21.03.2012, at 8.30 p.m., the petitioner was going to Salem to Tiruchengode Main Road, near TCMS Suryagavundampalayam, by a Hero Honda bearing Registration No.TN-34-F 7692. At that time, a person was driving the lorry bearing Registration No.TN-23-R 1299 in a rash and negligent manner and hit back side, against the petitioner's vehicle and the petitioner fell down and the petitioner sustained grievous injuries on his below the right eye, nose injuries head and all over body. The petitioner was immediately taken to the Krishna Hospital, Tiruchengode and shifted to KMCH Hospital Coimbatore, admitted as an inpatient from 21.03.2012 and given treatment for his injuries which resulted in a registration of a case by the Mallasamuthiram

Police Station in Cr.No.88 of 2012 against the driver of the lorry. Due to the accident, the petitioner is completely disabled and he could not do his work as before. Hence, he claimed a compensation of Rs.30,00,000/-.

3.The second respondent/Insurance Company in the counter statement denied the mode of accident as alleged in the claim petition. The second respondent/Insurance Company contended that they not admitting the fact that the petitioner was involved in the accident alleged to have taken place on 21.03.2012 at about 80.30 p.m., near TCMS Suriyagoundampalayam, Salem to Tiruchengode Main Road till today. They also denied the injuries and permanent disability are not due to the accident. They also contended that the first respondent is the owner of the vehicle and the same is insured with the second respondent. The petition is not maintainable for non-joinder of necessary parties. They further contended that the petitioner at the time of accident was not having valid driving license on the day of accident and he voluntarily invited the accident due to his carelessness. Further they contends that the FIR given by the petitioner have been closed as Mistake of Fact in the final report. Hence, there is no fault on the part on the second respondent. Hence, he prays to dismiss the appeal.

4. The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the said lorry and fixed joint liability on the respondents 1 and 2 to pay the compensation and awarded a sum of Rs.7,22,563/- as compensation under the following heads:

Sl.No.	Head	Amount
1.	Medical Bills	Rs.5,19,563/-
2.	Permanent Disability 50%	Rs.1,50,000/-
3.	Attendant Charges	Rs. 18,000/-
4.	Pain and Sufferings	Rs. 25,000/-
5.	Nourishment	Rs. 10,000/-
	Total	Rs.7,22,563/-

5. Aggrieved against the said award, the claimant has preferred this appeal.

6. In the grounds of appeal, the appellant has contended that the sum awarded by the Tribunal towards compensation at Rs.7,22,563/- against the claim of Rs.30,00,000/- is very much

on the meagre side. Further, the appellant has very much contended that the Medical Board has assessed his disability at 72%, but it has been wrongly observed by the Tribunal and it calculated the disability at 50%, which is very much on the meagre side. Further, there is also dis-figuration which was not considered by the Tribunal in spite of the evidence established before it by way of the photographs. The other grievance made by the appellant/claimant is that he lost his eye vision which is a permanent disability and the doctors viz., PW2 to PW4 have deposed that the partial permanent disability of the injured is 64%. Due to the accident, the petitioner is completely disabled and he cannot continue his work as he was doing earlier. However, the grievance raised by the appellant is that he was under treatment for a number of days under various departments and the nature of injuries are also grievous and hence, the loss of income ought to have been considered properly in a just and fair manner. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. On the other hand, the learned counsel for the second respondent/Insurance Company contended that the assessment taken by the Tribunal at 50% for permanent disability and awarded a sum of Rs.1,50,000/- and calculated loss of income for three months and the sum awarded under pain and sufferings, nourishment are very much reasonable. When the age of the injured person is 60 years and the loss of income is also not proved by any reliable evidence, the assessment made by the Tribunal is very reasonable.

8. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.J. Chandran, learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

9. On perusal of the records, it is seen that the claimant sustained grievous injuries due to the said accident. It is observed from the evidence and documents that the claimant sustained grievous injuries and Ex.P.11/permanent disability certificate was produced by examining the PW2 to PW4/Doctors. As per Ex.P8/Medical Bill, Ex.P10/wound certificate and Ex.P11/Disability certificate, the disability at 50% was taken by the Tribunal by awarding Rs.3,000/- per percentage and the said sum of Rs.7,22,563/-has been awarded and the same is very much on the meagre side and the same has to be taken at 72% by awarding Rs.3,000/- per percentage considering the nature of occupation and also the income that was lost by the claimant in future prospects.

10. On the other hand, the second respondent/Insurance Company vehemently contended that the sum awarded by the Tribunal is very much reasonable by taking entire disability at 50%.

11. In view of the above submissions and considering the date of accident, disability and the injuries sustained by the claimant, this Court inclined to enhance the sum awarded for permanent disability by taking Rs.3,000/- per percentage at 72% and accordingly for 72%, it is calculated as $72\% \times \text{Rs.}3,000 = \text{Rs.}2,16,000/-$. It is seen that the Tribunal has not awarded any amount towards loss of amenities and transportation charges, hence a sum of Rs.25,000/- and Rs.10,000/- are granted towards loss of amenities and transportation charges. By considering the nature of injury and treatment taken by the injured, this court also inclined to enhance the sum under the head 'loss of income for 8 months by taking Rs.6000/- per month which would be Rs.48,000/- (6000x8). The sum awarded for loss of income is Rs.48,000/-. The sum awarded by the Tribunal under other heads viz., pain and sufferings, nourishment and attender charges are 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.	Medical expenses	Rs.5,19,563/-	Rs.5,19,563/-
2.	Permanent Disability (72% x Rs.3000)	Rs.1,50,000/-	Rs.2,16,000/- (3000x72)
3.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Transportation charges	-	Rs.10,000/-
6.	Loss of amenities	-	Rs.25,000/-
7.	Attendant charges	Rs.18,000/-	Rs.18,000/-
8.	Loss of income	-	Rs.48,000/-
	Total	Rs.7,22,563/-	Rs.8,71,563/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,22,563/- is hereby enhanced to Rs.8,71,563/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

13. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is 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.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Motor Accident Claims Tribunal
Subordinate Judge Court, Tiruchengode.

+1cc to Mr.J.Chandran , Advocate SR.No. 65107

+2ccs to Mr.C.Parneedharan , Advocate SR.No. 65119

C.M.A.No.2828 of 2019

A.SK(02/09/2020)

सत्यमेव जयते

WEB COPY