

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2458 of 2019

Ganesh @ Ganesan

.. Appellant/Petitioner

Vs.

1.M/s.Vidhyaa Vikas Girls Hr.Sec School,
Varagoorampatty, Koottappalli Post,
Tiruchengode Taluk, Namakkal District.

2.The United India Insurance Co., Ltd.,
Divisional Office, No.146, II Floor,
Kumar Complex, Annasalai,
Tiruchengode Taluk,
Namakkal District - 637 211.

3.Vijayakumar

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2018 made in M.C.O.P.No.99 of 2016, on the file of Motor Accident Claims Tribunal, Sub-Court, Tiruchengode.

For Appellant	:	Mr.T.S.Arthanareeswaran
For R2	:	Mr.C.Paranthaman
		R1 & R3 - Exparte

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 12.12.2018 made in M.C.O.P.No.99 of 2016, on the file of Motor Accident Claims Tribunal, Sub-Court, Tiruchengode.

2.The appellant herein is the claimant who aggrieved against the award of the Tribunal at Rs.1,77,854/- as compensation against the claim of Rs.15,00,000/-.

3.The brief facts is as follows:

On 14.01.2016 at about 05.30 p.m. while the appellant was travelling as a pillion rider in TVS 50 XL - Motor Cycle bearing registration No. TN-28 R-1878 at Vittampalayam Road, Sengalpalayam, Thirucehngode Taluk from north to south, at

that time light motor vehicle viz. Tata Ace bearing registration No.TN-34 L-8069, came in the opposite direction in a rash and negligent manner and dashed against the two wheeler. The appellant who is the pillion rider sustained grievous injury including fracture and he was given treatment in Krishna Hospital, Tiruchengode for 9 days as in-patient. Inspite of the effective treatment, he sustained disability and has incurred high medical expenses and loss of income and he claimed Rs.15,00,000/- as compensation.

4.The 2nd respondent/Insurance Company denied the mode of accident as stated by the claimant. Further the respondent/Insurance Company with regard to liability has stated that there is violation of policy condition as the driver of the 1st respondent vehicle did not possess any badge at the time of accident and further the sum claimed by the claimant under various heads are excessive and the appellant has no permanent disability and he is hale and healthy and prayed for dismissal of the appeal.

5.The Tribunal after analyzing the evidence placed by the appellant fixed the liability on the 1st respondent's driver stating that his rash and negligent driving resulted in this accident. While determining the compensation, the tribunal has gone through the evidence of P.W.1 the appellant/injured person and P.W.2/Doctor and assessed disability at 25%, has awarded the compensation under various heads as follows:

Head	Sum awarded by the Tribunal
Medical Expenses	Rs.67,854,00/-
Pain and Suffering	Rs.25,000/-
Extra Nourishment	Rs.10,000/-
Permanent Disability at 25% at the rate of Rs.3,000/- per percentage	Rs.75,000/-
Total	Rs.1,77,854/-

6.Aggrrieved against the said award the claimant has preferred this appeal. In the grounds of appeal, the appellant has contended that when the negligence is fixed on the driver of the Tata Ace, the compensation awarded by the Tribunal is very meagre and it is against the established principles of the High Courts and Supreme Court. The sum awarded by the Tribunal is very meagre when the occupation of the injured person has been deposed that he was cultivating his own land

and earning a sum of Rs.15,000/- per month. The Tribunal has not considered the fact that due to the injuries sustained by him in the accident, the appellant could not continue his occupation as agriculturist. Apart from that, the appellant was also admitted as in-patient for 9 days and by surgery, plates and screws were fixed which incurred a heavy medical expenses and further contended that no sum has been awarded for attendant charges, transportation to the hospital and future medical expenses. The sum awarded towards pain and suffering is very less. The Tribunal has not considered permanent disability at 30% which was marked as Ex.P6/disability certificate, assessed by the medical board and prayed for enhancement of compensation.

7.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.C.Paranthaman, learned counsel appearing for the 2nd respondent and perused all the materials available on record.

8.The appellant is very much aggrieved on the award of the Tribunal at Rs.1,77,854/-. The learned counsel appearing for the appellant vehemently argued that the injury sustained by the appellant was grievous in nature and by surgery plates and screws were fixed and that are very much proved by the Ex.P5/wound certificate, Ex.P3/medical bills and Ex.P2/discharge summary and relying the fact that the appellant sustained fractured in the right knee and also on the right thigh and he was under treatment from 14.01.2016 to 22.01.2016 and being an agriculturist he was doing agriculture by his own, these aspects were not considered by the Tribunal. The appellant has incurred loss of income and future loss of income. Further inspite of the treatment as in-patient and surgery the Tribunal has not awarded any sum for transportation and attendant charges and this aspects has to be properly considered.

9.On perusal of the records, it is seen that the appellant sustained 25% disability as deposed by P.W.2/Doctor and he marked Ex.P6/disability certificate to substantiate the same. The Tribunal considering the same fixed Rs.3,000/- per percentage and awarded Rs.75,000/- towards permanent disability is just and reasonable. While verifying the age of the injured person, the appellant himself has admitted that he is 70 years at the time of accident. Though the appellant has stated that he is owing agricultural land and he is doing agricultural work by himself and earning a huge amount and there is huge loss of income due to the injuries sustained by him in the accident and there is no proof to prove the income placed by the appellant before the Tribunal. The sum awarded

by the Tribunal towards pain and suffering and extra nourishment are very much appropriate and reasonable and the said amount does not required any modification.

10.Considering the age of the injured appellant who is 70 years old and sustained 25% disability and also considering the fact that he took treatment for 9 days as in-patient and undergone surgery, this Court is of the view that it would be proper to grant commendation under the heads transportation, attendant charges, future medical expenses and loss of amenities. Accordingly, this Court grant a sum of Rs. 10,000/- each under the heads future medical expenses and attendant charges respectively and a sum of Rs.5,000/- each under the heads transportation and loss of amenities respectively. 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)	Award confirmed or enhanced or granted
1.	Medical Expenses	67,854/-	67,854/-	Confirmed
2.	Pain and Sufferings	25,000/-	25,000/-	Confirmed
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Permanent Disability	75,000/-	75,000/-	Confirmed
5.	Future Medical Expenses	-	10,000/-	Granted
6.	Attendant Charges	-	10,000/-	Granted
7.	Transportation	-	5,000/-	Granted
8.	Loss of Amenities	-	5,000/-	Granted
	Total	Rs.1,77,854	Rs.2,07,854/-	enhanced by Rs.30,000/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,77,854/- is enhanced to Rs.2,07,854/- together with

interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

12.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar(C.S.IX)

/True Copy/

Sub Assistant Registrar

To

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

2.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

+2 cc to M/s.C.Paraneedharan,Advocate Sr.No. 57609

+1 cc to M/s.C.Paranthaman,Advocate Sr.No. 57041

AKM/07.02.2020/5P-6C /

C.M.A.No.2458 of 2019