

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2019

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.2431 of 2019

Murugesan

... Appellant

Versus

1.Ravikumar

2.The Oriental Insurance Co., Ltd,
Kumar Complex, 1st Floor,
146-West Car Street,
Tiruchengode Town & Taluk,
Namakkal District.

.... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the above Civil Miscellaneous Appeal and enhance the award in the judgment and decree dated 10.12.2018 made in M.A.C.T.O.P.No.95 of 2013, on the file of Motor Vehicle Accidents Claims Tribunal/Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For R1 : Notice not ready

For R2 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed to enhance the award made in the judgment and decree dated 10.12.2018 in M.A.C.T.O.P.No.95 of 2013, on the file of Motor Vehicle Accidents Claims Tribunal/Subordinate Judge Court, Tiruchengode.

2.The Civil Miscellaneous Appeal has been preferred made by the claimant against an award made by the Tribunal at Rs.3,12,305/- against claim made by him for Rs.5,00,000/-.

3. The brief facts of the case:

The claimant sustained by injuries due to the accident occurred on 08.02.2013, when he was proceeding in the Tiruchengode to Kokarayanpettai Road at the time a vehicle No.TN 34 Q-2014 (BAJAJ DISCOVER) came behind in rash and negligent and dash against the petitioner and cause injury. The claimant claims himself that he was earning Rs.10,000/- per month and he has spent medical expenses and inspite of surgery, his original health could not restrain and he sustained disability.

4.The second respondent Insurance Company denied mode of accident as stated by the claimant and in the claim petition. The respondent also very much denied the claim made by the injured person in various heads. The tribunal, upon hearing the contentions made by the respondent and petitioner, has given finding that accident occurred only due to rash and negligent driving on the part of the driver/ first respondent. Since the 2nd respondent, being the insurer of the said vehicle, directed to pay the compensation to the claimant and recover the same from the 1st respondent/driver. While determining the compensation, Tribunal has also observed the nature of injury sustained by the petitioner and the disability placed before the Tribunal and the inconvenience caused to this injured has awarded a sum of Rs.3,12,305/- as compensation in various heads as follows:

SI.No.	Particulars	Amount Awarded by the Tribunal (amount in Rupees)
1.	Medical Expenses	Rs.1,79,555.00
2.	Transport Expenses	Rs.8,750.00
3.	Permanent Disability-24% PW4-Dr.Amstrong (Ganga Medical Centre & Hospital). PW3 - Dr.Krishnasamy - 70%	24x3,000=Rs.72,000.00
4.	Loss of Income (Lorry Driver)	Rs.12,000.00

SI.No.	Particulars	Amount Awarded by the Tribunal (amount in Rupees)
5.	Pain & Suffering Date of admission: 08.02.2013 Date of discharge:16.02.2013 (8 days inpatient)	Rs.10,000.00
6.	Extra Nourishments	Rs.10,000.00
7.	Future Medical Expenses	Rs.20,000.00
8.	Attender Charges	NIL
9.	Loss of Cloth Damages	NIL
10.	Loss of Amenities	NIL
	Total	Rs.3,12,305.00

5. Aggrieved against the said award the claimant has preferred this appeal for enhancement. On perusal of records, it is seen that the appellant met with an accident and incurred huge loss of income, but the tribunal has not considered this aspect. On the other hand, the respondent vehemently argued that the income of the injured person was taken at Rs.6,000/- without any valid proof. The monthly income taken by the tribunal at Rs.6,000/- is very much reasonable. The disability sustained by the claimant at 74% was very much spoken by P.W.2 and P.W.3, Ex.P.15 is the disability Certificate. The Tribunal has considered the same and awarded a sum of Rs.3,000/- per percent by taking 24% disability, which this Court finds it meagre, hence, this Court is inclined to fix the disability at 50% and calculates the permanent disability, which would be at Rs.1,50,000/- (50X3000). Like wise, considering the injuries and the disability sustained by the claimant, the amount awarded by the tribunal under head 'Transport Expenses' at Rs.8,750/- is enhanced to Rs.20,000/-

Further considering period of treatment, loss of income calculated by the Tribunal for two months by taking Rs.6000/- per month at Rs.12,000/- is reasonable and does not require

any modification. The sum awarded for future medical expenses is enhanced to Rs.40,000/- and the sum awarded under the heads pain and suffering, the extra nourishment are confirmed. It is seen from the award that there is no sum awarded for attender charges, loss of damages to clothes and loss of amenities, hence a sum of Rs.10,000/- each is granted under the said heads respectively. Thus the compensation awarded by the Tribunal is as follows:-

SI.No.	Particulars	Amount Awarded by the Tribunal (amount in Rupees)	Pray's before this Hon'ble Court (amount in Rupees)
1.	Medical Expenses	Rs.1,79,555.00	1,79,555.00/-
2.	Transport Expenses	Rs.8,750.00	20,000.00
3.	Permanent Disability- 24%	24x3,000=Rs.72,000.00	50x3000=Rs.1,50,000.00/-
4.	Loss of Income (Lorry Driver)	Rs.12,000.00	12,000/-
5.	Pain & Suffering Date of admission: 08.02.2013 Date of discharge:16.02.2013 (8 days inpatient)	Rs.10,000.00	10,000/-
6.	Extra Nourishments	Rs.10,000.00	10,000.00/-
7.	Future Medical Expenses	Rs.20,000.00	40,000.00/-
8.	Attender Charges	NIL	10,000/-
9.	Loss of Cloth Damages	NIL	10,000/-
10.	Loss of Amenities	NIL	10,000/-
	Total	Rs.3,12,305.00	Rs.4,51,555

6.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,12,305.50/- is hereby enhanced to Rs.4,51,555/-. No Costs.

7.The 2nd respondent/Insurance Company is directed to deposit the 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 and thereafter, permitted to recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw his share. On the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Vehicle Accidents Claims Tribunal,
Subordinate Judge Court,
Tiruchengode.

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

सत्यमेव जयते

+1cc to Mr.J.Chandran, Advocate SR.No.52232

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PA(CO)
GMY(02/03/2020)