

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2650 of 2019

S.Subash Chandrabose

... Appellant/Petitioner

Vs.

1.Mr.A.Sasidharan

[R1 remained exparte before the Trail Court
Notice may be dispensed with]

2.United India Insurance Company Limited,
Rep. by its branch Manager,
Office at (012103), No.17,
G.P.M. Street,
Ambapuram,
Gudiyatham.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2019 and made in M.C.O.P.No.381 of 2015 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.P.Sateesh Kumar

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

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.381 of 2015, dated 31.01.2019, on the file of the Chief Judicial Magistrate Court, (Motor Accidents Claims Tribunal), Vellore.

2. The appellant is the claimant herein in M.C.O.P.No.381 of 2015, on the file of the learned Chief Judicial Magistrate Court (Motor Accidents Claims Tribunal), Vellore. He filed the above said MCOP claiming compensation of Rs.25,00,000/- for the injuries sustained by him in a road accident that took place on 16.04.2015, at about 08.30 pm, when the appellant was coming near Nagashetty Halli in his

Motor Cycle bearing registration No.23 BL 9579 for his personal work, a TATA Indica car bearing registration number TN-01-AC-7434 was irresponsibly coming in the opposite side with heavy speed in a rash and negligent manner and hit the petitioner's motor cycle directly. The appellant had taken first aid and thereafter he admitted in PES Hospital, Kuppam for further treatment. In the counter affidavit filed by the second respondent has denied that the accident was occurred only due to the the rash and negligent driving on the part of the rider of Motor cycle.

3. The Tribunal considering the pleadings, oral and documentary evidences adduced on the side of the injured held that the accident occurred due to the rash and negligent driving on the part of the driver of the car, belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.99,259/- as compensation to the appellant/claimant under the following heads:

S.No	Description	Amount awarded by Tribunal
1.	Disability at 10% at the rate of Rs.3,000/- per percentage	Rs.30,000/-
2.	Medical expenses	Rs.52,259/-
3.	Transport	Rs.2,000/-
4.	Extra Nourishment	Rs.5,000/-
5.	Pain and suffering	Rs.10,000/-
	Total	Rs.99,259/-

4. Aggrieved by the said award passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act for enhancement.

5. Heard the learned counsel appearing for the appellant as well as the second respondent-Insurance Company and perused all the materials available on record.

6. The learned counsel for the appellant submitted that due to the accident the appellant suffered grievous injuries. It is seen from the disability certificate that the Doctor pointed out that the appellant has sustained multiple injuries all over the body with severe right leg blood injuries and right leg femur and fibula bones got fractured and the appellant was undergone two operations on his right leg. still, the appellant taken continuing treatment. He further submitted that the appellant is not able to work and

walk and his future is completely spoiled and the family members are suffering lot under poverty due to the permanent disability caused to the appellant and also to pointed out that the injured finds it difficult to work and carry weight with left hand for which he assessed 10% disability issued disability certificate. The tribunal has considered 10% disability and awarded a sum of Rs.30,000/- for disability (Disability at 10%, at the rate of Rs.3,000/- per percentage), which is meager. The learned counsel further submitted that the tribunal has not awarded any compensation for damages of articles and attender's charges.

7. The learned counsel appearing for the second respondent/ Insurance Company limited on the other hand contended that the accident occurred only due to the rash and negligent driving of the claimant. He has further submitted that the the appellant had not given compliant against the driver of the car and he gave a complaint as against the first respondent suppressing the real facts. He further submitted that there is no proof for occupation or income of the injured and in the absence of any details, the Tribunal erroneously fixed the monthly income without any basis and on the whole, the sum awarded by the Tribunal under other heads is excessive. He further submitted that the tribunal ought not have reduced the disability assessed by the doctor and ought to have applied the multiplier method by considering the nature of injuries and disability.

8. On perusal of records, it is seen that the particulars have been furnished by the appellant with regard his age, income and occupation and the same are taken into consideration by the Tribunal. The injured was aged about 25 years at the time of accident and he was working as a Welder and earning a sum of Rs.15,000/- per month. It is observed from the evidence of doctor that the disability sustained by the claimant has been stated as 10%. The sum awarded by the Tribunal under the head disability at Rs.30,000/- by taking at 10% disability and Rs.3,000/- per percentage in proper and reasonable, hence the same does not require any modification. It is seen that the tribunal has not awarded a considerable compensation inspite of the disability sustained by the appellant. Since, the amount awarded by the Tribunal towards pain and suffering is meager, the same is enhanced to Rs.20,000/-. Similarly, the amount awarded by the Tribunal towards Extra Nourishment and Transportation are also enhanced to Rs.10,000/- each.

9. The total compensation payable to the appellant is modified as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Disability at 10% at the rate of Rs.3,000/- per percentage	Rs.30,000/-	Rs.30,000/-
2.	Medical expenses	Rs.52,259/-	Rs.52,259/-
3.	Transport	Rs.2,000/-	Rs.10,000/-
4.	Extra Nourishment	Rs.5,000/-	Rs.10,000/-
5.	Pain and suffering	Rs.10,000/-	Rs.20,000/-
	Total	Rs.99,259/-	Rs.1,22,259/-

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.99,259/- is enhanced to Rs.1,22,259/-. No costs.

11. The second respondent / Insurance Company is directed to deposit the entire amount modified 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. The interest for the said amount shall be at 7.5% per annum. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The appellant/claimant is directed to pay the requisite court fee, if any, for the enhance award amount within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
सत्यमेव जयते
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

tta
To

1. The Chief Judicial Magistrate Court,
Motor Accidents Claims Tribunal, Vellore.

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

+1cc to Mr.P.Satheesh kumar, Advocate SR.53926
+1cc to Mr.J.Chandran, Advocate SR.53949

C.M.A.No.2650 of 2019

PM(CO)
CB(28/02/2020)



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