

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.07.2019
CORAM:
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM
C.M.A.No.2796 of 2019

Kaliyannan

Appellant

Vs

1.Boobalan

2.The Oriental Insurance Company Limited

Parimalam Complex, 2nd floor,

11 EVN Salai, Erode 638 011.

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.462 of 2014 dated 23.01.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree made in M.C.O.P.No.462 of 2014 dated 23.01.2019, on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode. The claimant is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

2. The brief facts leading to the claim petition is that on 24.05.2014, at about 07.50 p.m., when the appellant/claimant was riding his TVS 50 motor cycle bearing Registration No.TN 28 R 1857 near Mettupalayam bus stop in Rasipuram to Trichengode road, from east to west direction, at that time, the Bajaj Discover motor cycle bearing Registration No. TN 28 AJ 4024, which came in the opposite direction in a rash and negligent manner, hit against the appellant/claimant vehicle. As a result of which, he sustained grievous injuries and also suffered huge medical expenses by way of treatment taken in the Viveganandha Medical care Hospital, Tiruchengode as in-patient. The appellant/claimant met with huge loss of income, mental agony, pain and sufferings, medical expenses and future amenities due to the said accident. Hence, the claimant claimed a sum of Rs.15,00,000/- as compensation for the said loss.

3.The first respondent totally denied the mode of the accident and also very much disputed the sum claimed by the injured under various heads especially the income that has been stated by the claimant as he is working as a cleaner in Vivekanandha College.

4.The second respondent/ Oriental Insurance Company also denied the mode of the accident by stating that the accident took place only due to the carelessness and negligence on the part of the claimant, he suddenly tried to cross the road without following the traffic rules and regulations. Hence, the award made by the Tribunal is highly excessive, exorbitant and without any basis. Further, it is stating that the claimant was not having any valid driving license at the time of the accident and the owner and insurer of the said motorcycle were not made as party in the petition, hence, sought for dismissal of the said claim petition.

5.The Tribunal after analysing the evidence and documents placed before the same, with regard to the negligence has given finding that the accident occurred only due to the rash and negligent riding on the part of the rider of the first respondent vehicle. While determining the compensation, the Tribunal has observed Ex.P3/ Wound Certificate, Ex.P4/ Discharge Summary and also by verifying the disability sustained by the appellant and awarded a sum of Rs.98,600/-, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Partial permanent disability at 10% (10xRs.3,000)	30,000.00
2.	Medical expenses	33,600.00
3.	Pain and sufferings	25,000.00
4.	Extra nourishment	10,000.00
Total		98,600.00

6.Aggrieved against the said award, the appellant/claimant has preferred this appeal for enhancement of compensation. In the ground of the appeal, the Tribunal has given a finding that the accident occurred only due to the rash and negligent riding of the rider of motorcycle bearing Registration No.TN 28 AT 4024. The Tribunal has awarded a very meager amount as compensation, which is against the principles laid down by the High Court and Hon'ble Supreme Court. Inspite

of the fact that the appellant/claimant was working as a cleaner in the college bus and earning a sum of Rs.10,000/- per month, the Tribunal has not considered the same. Further, the appellant/claimant has taken treatment as in-patient from 24.05.2014 to 06.06.2014 is merely 12 days for the grievous injuries sustained by him. The tribunal has not awarded any sum for future treatment, loss of amenities and attender charges. Hence, the appellant/claimant sought for enhancement of compensation.

7.Heard, Mr.T.S.ARthanareeswaran, learned counsel for the appellant/claimant, Mr.J.Chandran, learned counsel for the second second respondent.

8.On hearing both sides and perusing all the records, it is seen that the appellant/claimant sustained injuries as mentioned in Ex.P3. The surgery was done to him and k-wire also fixed for the said injury and the Medical Board also assessed the disability of the appellant/claimant at 10%, for which Ex.P7/Disability Certificate was filed before the Tribunal. The Tribunal observed the disability and awarded a sum of Rs.3,000/- per percentage towards disability, which arrived at Rs.30,000/- (Rs.3,000/- x 10%) is very much reasonable. Further, it is seen that the injured person was aged about 65 at the time of the accident and in view of the non-production of any evidence of documents to prove his avocation and income the Tribunal has not awarded any amount for loss of income. Hence, this Court is inclined to award a sum of Rs.20,000/- towards loss of income for a period of four months, considering the nature of injuries and period of treatment taken by him. Further, it is seen that no amounts were awarded towards 'attender charges' and 'transportation'. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards Transportation and Rs.5,000/- towards attender charges. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
1.	Disability	30,000.00	30,000.00
2.	Medical expenses	33,600.00	33,600.00
3.	Pain and sufferings	25,000.00	25,000.00
4.	Extra nourishment	10,000.00	10,000.00
5.	Loss of income		20,000.00
6.	Attender's charge		10,000.00
7.	Transportation		5,000.00

S.No	Head	Awarded by the Tribunal (in.Rs.)	Enhanced Compensation (in.Rs.)
	Total	98,600.00	1,33,600.00

Thus, the appellant/claimant is entitled to a sum of Rs.1,33,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

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.98,600/- to Rs.1,33,600/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii)The appellant/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/ Oriental 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. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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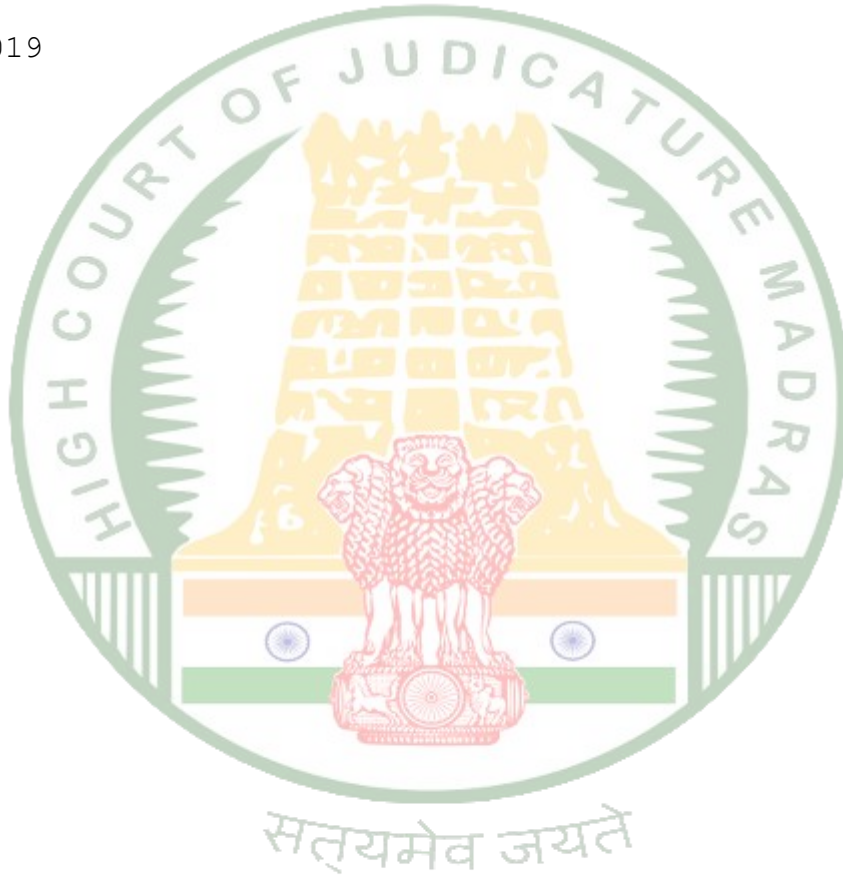
1.The Motor Accidents Claims Tribunal,
2.The Subordinate Court, Tiruchengode.
3.The Section Officer
VR Section
High Court Madras

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+1 cc to M/s.J.chandran Advocate sr59594
+2 ccs to M/s.T.S.Arthanareeswaran Advocate sr59594

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