

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :09.04.2019

Judgment Delivered on :22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3376 of 2012

Shanmugavel ... Appellant/Petitioner

Versus

1.S.N.Meyyazhagan
(1st respondent set-exparte before the Tribunal)

2.The United India Insurance Company Limited,
Divisional Office-2
(First Floor),
104-A, Peramalur Main Road,
Salem-7. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 07.03.2007 made in M.C.O.P.No.1365 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Essential Commodities Act) Salem.

For Appellant : Mr.K.Kuppusamy

For R1 : Exparte before the Tribunal

For R2 : I.Malar for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order and Decree dated 07.03.2007 made in M.C.O.P.No.1365 of 2004 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Essential Commodities Act) Salem.

2. The essence of the case is that on 30.06.2004 at 8.30 p.m, the claimant was just riding his TVS moped bearing Registration No.TN 30 Z 9625 along with a pillion rider, named Anbazhagan, near Muthunaickenpatti branch road on the Omalur to Salem Main Road. At that time, the first respondent's tanker lorry bearing Registration No.TDM 3655 came at the opposite side in a rash and negligent manner and dashed against the claimant's moped directly. Due to that, the claimant was thrown out of the

vehicle and sustained severe fracture injuries all over the body. The accident had taken place due to rash and negligent driving on the part of driver of the first respondent's vehicle, which was insured with the second respondent-Insurance company. Therefore, the claim petition was filed seeking compensation of Rs.3,00,000/-.

3. The second respondent-Insurance company resisted the claim petition by disputing the age, income and other details furnished by the claimant in the claim petition and prayed for dismissal of the claim petition.

4. The Tribunal awarded a sum of Rs.96,000/- as compensation to the claimant. However, the claimant, having not been satisfied with the award of compensation made by the Tribunal, seeks enhancement of compensation by filing this appeal.

5. Before the Tribunal, the claimant examined himself as P.W.1, besides, Dr.B.Sridhar was examined as PW.2 and the claimant has produced sixteen documents as Exs.P1 to P4. On the side of the respondent, no oral or documentary evidence was adduced.

6. Heard the counsel for both sides and perused the materials placed on record.

7. The factum of the accident, the manner of the accident, rash and negligence on the part of the driver of the offending vehicle belonging to the first respondent insured with the second respondent-Insurance Company not being challenged, are hereby confirmed.

8. P.W.1 examined himself and deposed regarding the injuries and also examined P.W.2-Doctor and marked Ex.P2-Wound Certificate issued by the Government Hospital, Salem and Ex.P3-Disability Certificate issued by P.W.2-Doctor.

9. P.W.2-Doctor would depose that due to the injuries, there was a bone fracture on the right leg and 50 degrees of movement was restricted and hence, he could not walk or squat for a long time and he also suffered fracture on the shoulder. On both the shoulders, the rotation movement has been reduced by 50% and due to the injury on the 3 Elbow rib bone injury, P.W.2-Doctor has assessed the disability at 70% and taking into the entirety of the circumstances, this Court is of the considered view that the disability suffered by the claim petitioner is re-fixed at 65% and the date of the accident being in the year 2004, Rs.1500/- was awarded for 1% of the disability. Accordingly, the compensation is re-assessed at 65% at the rate of Rs.1,500/- Accordingly, for 65% of disability a sum of Rs.97,500/- is awarded. ($65\% \times 1500/- = \text{Rs.}97,500/-$).

10. Further, under the head "pain and suffering", the Tribunal awarded Rs.15,000/- and taking into consideration the suffering undergone by the claimant, it is hereby enhanced to Rs.20,000/-Further, the amount of Rs.7,000/- is hereby awarded 'for loss of amenities'. With regard to "Nutrition and Extra nourishment", the amount of Rs.10,000/- is hereby awarded. With regard to "transportation", the amount of Rs.15,000/- is hereby awarded. With regard to 'medical expenses' and 'attender charges' the Tribunal awarded Rs.1,000/- and Rs.5,000/- are also hereby confirmed.

11. Accordingly, the award of the Tribunal in M.C.O.P.No.1365 of 2004 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	loss of earning power	Rs.65,000/-	----
2.	Permanent disability	----	Rs. 97,500/- (at 65%)
3.	Medical expenses	Rs. 1,000/-	Rs. 1,000/-
4.	Loss of earning power after discharge from Hospital	Rs. 10,000/-	----
5.	Attender's charges	Rs. 5,000/-	Rs. 5,000/-
6.	Pain & sufferings	Rs. 15,000/-	Rs. 20,000/-
7.	Transport charges	----	Rs. 15,000/-
8.	Loss of amenities	----	Rs. 7,000/-
9.	Nutrition & Extra Nourishment	----	Rs. 10,000/-
	Total	Rs.96,000/-	Rs.1,55,500/-

The compensation awarded by the Tribunal is enhanced from Rs.96,000/- to Rs.1,55,500/- which shall carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.96,000/- to Rs.1,55,500/-.

(iii) The appellant/claimant is directed to pay the court fee, if any, for the enhanced compensation amount, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/United India Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.1,55,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 1365 of 2004 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge-cum-Essential Commodities Act) Salem, within a period of eight weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made by the second respondent-Insurance Company, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nvi

To

1.The Motor Accidents Claims Tribunal,
(Additional District Judge-cum-Essential Commodities Act)
Salem.

Copy To : The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.3376 of 2012

VG II(CO)
GMY(28/02/2020)