

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2019
CORAM:

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No. 354 of 2014

K.P. Saravanan Appellant/Petitioner

Vs.

1. K. Abdul Rahuman
(R-1 exparte in Tribunal)
2. The Oriental Insurance Co.Ltd.,
No.8, Esplanade Road,
Esplanade, Chennai - 108. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2005 made in MCOP No.3062 of 2000 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.F. Terry Chellaraja

Respondents : Mr. J. Chandran for R-2
R-1 Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgement and Decree dated 22.11.2005 made in MCOP No.3062 of 2000 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. According to the claimant, on 31.08.1999 at about 23.00 hours, when the appellant/claimant was riding his motor cycle bearing Registration No. TN-07-J-7932 at Adyar LB Road, a Mahindra Jeep bearing Registration No. TMD-4281 driven by its driver in a rash and negligent manner hit the appellant/claimant. Stating that the first respondent as the owner of the vehicle and the second respondent as the insurer of the vehicle are liable to pay the compensation, the petitioner has filed a claim petition before the Tribunal claiming a sum of Rs.1,50,000/-.

3. The claim was resisted by the second respondent/insurance company/insurer by filing a detailed counter affidavit wherein it denied the averments made in the claim petition in total.

4. After full-fledged trial, the Tribunal, based on Ex.P7, the First Information Report and Ex.P.8, Rough Sketch and the evidence of P.W.1 has held that the accident had occurred only due to the rash and negligent driving of the driver of the Jeep and thus has fastened the liability on the insurer. Further, based on evidence since it was established that the insurance policy of the Jeep was alive, the Tribunal has held that the insurer/second respondent herein is liable to pay the compensation to the claimant/appellant. The Tribunal also quantified the total compensation at Rs.99,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the quantum arrived at, the claimant as appellant is before this Court.

5. Heard both sides.

6. Since no ground or argument was advanced by the learned counsel for both sides on negligence, this Court would like to deal only with the quantum eschewing the negligence aspect.

7. The learned counsel for the appellant/claimant has submitted that the Tribunal has failed to consider the nature of injuries sustained by the claimant in a proper perspective; the Tribunal ought to have awarded more compensation under heads permanent disability, pain and sufferings and loss of income, since the same does not match with the injuries sustained by the claimant; and in any event, the award passed is on the lower side, which needs considerable enhancement.

8. Per contra, the learned counsel for the second respondent/insurance company has submitted that the Tribunal has taken into account all the aspects and has awarded the compensation at Rs.99,000/- under various heads, based on the settled principles of law and weightage of evidence and hence interference of the same is uncalled for. He further submitted that the accident was of the year 1999, award was passed during the year 2005 and the appeal has been filed during the year 2014 and appeal is being disposed only now and hence, the interest portion by the Tribunal needs modification.

9. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

10. A perusal of the award of the Tribunal would go to show that the based on Ex.P5, Salary Certificate, the Tribunal has taken the note of the income of the injured at Rs.6,000/- per month and taking into account that the injured would not have gone for work for two months has awarded a sum of Rs.12,000/- under the head "loss of income". But a perusal of Ex.P.5 would disclose that the monthly income of the injured was Rs.10,764/-, which the Tribunal ought to have taken at Rs.10,000/- and if taken the loss of income for two months, the loss of income for two months would be Rs.20,000/-. Accordingly, under the head loss of income Rs.20,000/- is awarded.

11. It is not in dispute that claimant/appellant suffered fracture of right tibia bone, which was evident from Exs.P1 to P10. P.W.2, the Doctor has assessed disability at 35%. P.W.2 in his evidence has stated that the injured had undergone surgery with screws and nails implanted and the bone is mal-united and hence, the appellant could not able to walk without stick. Ultimately, the Doctor has assessed the disability at 35%, but the Tribunal has awarded Rs.30,000/- towards permanent disability by taking Rs.1,000/- per percentage of disability for 30% disability. The Tribunal without any regime or reason has taken the disability at 30% instead of 35% as assessed by the Doctor.

12. With the above discomforts, the appellant has to lead his entire life and hence, this Court is of the view that the Tribunal erred in taking the disability at 30% and disability ought to have taken at 35% as assessed by the Doctor. If 35% disability is taken, the amount under the head disability would be Rs.35,000/- and accordingly, the same is awarded. The Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings, which in the considered view of this Court is lesser and hence, a sum of Rs.20,000/- would meet the ends of justice.

13. The Tribunal has awarded sums of Rs.1,000/-, 1,000/-, 40,000/- and Rs.10,000/- towards transportation, extra nourishment, medical expenses and loss of earnings respectively, which in the opinion of this Court is perfectly valid. Hence, the restructured compensation amount, item wise, would be thus:-

Loss of income	-	Rs.20,000/-
Transportation	-	Rs. 1,000/-
Extra nourishment	-	Rs. 1,000/-
Medical expenses	-	Rs.40,000/-
Pain and sufferings	-	Rs.20,000/-
Permanent Disability	-	Rs.35,000/-
Loss of earning capacity	-	Rs.10,000/-

Total	-	Rs.1,27,000/-

14. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed by enhancing the total compensation from Rs.94,000/- to Rs.1,27,000/-, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Needless to state that the appellant/claimant is not entitled to receive any interest for the condonation of delay period, if any. The second respondent is directed to deposit the enhanced amount as ordered by this Court within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any. The appellant/claimant shall pay the necessary Court fee for enhanced compensation amount before receiving the copy of this judgment. On such deposit being made by the second respondent, the Tribunal shall transfer the total amount to the Savings Bank account of the appellant through RTGS within a period of one week thereafter. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kv

To

1. The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section
High Court, Madras.

+1 cc to M/s.M.Malar Advocate sr103038
+1 cc to Mr.J.Chandran Advocate sr103335

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