

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.11.2019
CORAM:
THE HON'BLE Mr. JUSTICE R.MAHADEVAN
Civil Miscellaneous Appeal No.1616 of 2017

Saravanan

... Appellant/Petitioner

..vs..

1.Banumathi

(R-1 remained exparte before the Tribunal)

2. The Divisional Manager,

United India Insurance Co. Ltd.

No.46 Katpadi Road, Vellore. Respondents/respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 21.04.2010 made in M.C.O.P.No.565 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Thiruvannamalai.

For Appellant : Ms. M.Malar

For Respondents: Mr. P.Sankaranarayanan, for R-2,
Exparte, R-1.

J U D G M E N T

As against the claim made for a sum of Rs.1,00,000/-, the Tribunal has passed an award for a sum of Rs.65,000/- to the claimant / appellant. Branding the award as disproportionate to the injuries sustained, the appellant has filed this Civil Miscellaneous Appeal.

2. On 09.03.2002 at about 08.00 pm, when the appellant was travelling as a passenger in the minibus bearing Registration No.TN23-A-4003 in Vettavalam Mangalam Road, the bus driver drove the vehicle, in a rash and negligent manner at uncontrollable speed, thereby the vehicle had fallen in a road side pit and turned turtle. The passengers, who travelled in the Minibus sustained severe multiple injuries. The appellant also sustained fractures and injuries and was taken to the Government Hospital, Thiruvannamalai, for necessary medical treatment. The Police registered the case against the driver of the Minibus. Stating that the Insured and Insurer of the Minibus was responsible for the accident and they are required to compensate the appellant, he filed a claim petition before the Tribunal. As against the said claim, the Tribunal has awarded a sum of

Rs.65,000/- as total compensation, against which, the claimant, as appellant, has filed this Appeal for enhancement of compensation.

3. The learned counsel for the appellant has submitted that quantum arrived at by the Tribunal under all the heads is too low, which require considerable increase.

4. A perusal of the award of the Tribunal would go to show that though the appellant has stated that he was earning Rs.3,000/- per month by doing agricultural works, the Tribunal had taken the same at Rs.800/- per month without any reason and arrived at the disablement compensation.

4.1. It is not in dispute that the appellant has stated in the claim petition that he was earning Rs.3,000/- per month by doing agricultural works and he also entered into the witness box and adduced evidence to that effect. There is no rebuttal evidence to dispute the evidence adduced by the claimant. In such circumstance, in the absence of any strong evidence let in by the Insurer rebutting the monthly income of the appellant, the Tribunal ought to have taken at least Rs.1,200/- (taking the average day's income at Rs.40/-) as monthly income of the appellant, if not Rs.3,000/-.

4.2. As per pre-determined structural formula envisaged under II Schedule of the Motor Vehicles Act, for calculating the compensation amount under loss of income, the multiplier to be adopted is 17 and not 18 as done by the Tribunal. Hence, the correct multiplier to be adopted for disablement compensation for the appellant aged 27, is 17.

4.3. The Doctor has assessed the disability of the appellant at 35% considering the fracture of the appellant in his right leg and multiple injuries. The Doctor has also assigned convincing reasons to arrive at such a percentage of disability, which the Tribunal has correctly taken note of. Hence, adopting Rs.1,200/- as monthly income and 17 as multiplier, the compensation under the head loss of income would be Rs.85,680/- (Rs.1,200/- x 12 x 17 x 35%). Even though as per the calculation made by the Tribunal the amount towards 35% permanent disability works out to Rs.60,480/- the Tribunal has mentioned it as Rs.67,480/- which is a typographical error. However, the same is now enhanced to Rs.85,680/-.

5. This Court is of the opinion that the compensation awarded under other two heads, viz., pain and suffering and transport expenses etc., at Rs.2,520/- and Rs.2,000/-,

respectively, do not require any interference, since they commensurate with the period of treatment and injuries sustained by the claimant. Thus the appellant / claimant is entitled to the modified compensation of Rs.90,200/- with interest at the rate of 7.5% per annum from the date of petition.

6. In the result, this Civil Miscellaneous Appeal is partly-allowed by enhancing the total amount of compensation from Rs.65,000/- to Rs.90,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No costs.

7. The R-2 / Insurer is directed to deposit the enhanced compensation amount, as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the appellant / claimant within one week thereafter through RTGS. The court fee for the enhanced compensation amount shall be deposited by the claimant / appellant before receiving the copy of this judgment. Needless to state that the claimant / appellant is not entitled to any interest for the default period, if any, in respect of the enhanced compensation amount.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

srk
To

1. Motor Accident Claims Tribunal, Principal Sub Court,
Nagapattinam
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104

+1 cc to M/s.M.Malar Advocate sr97684

+1 cc to Mr.P.Sankaranarayanan Advocate sr97573

C.M.A.No.1616 of 2017

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