

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.198 of 2009

R.Ponnusamy ... Appellant/Petitioner (Claimant)

Vs.

1.G.D.Kochappan

2.Susy Varkey

3.The Oriental Insurance Co. Ltd.
Chalakudy, Kerala.

4.Prem @ Prem Arputharaj

5.Sathiskumar

6.United India Insurance Co. Ltd.
No.3, O.N. Coimbatore-45. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.10.2007 made in M.C.O.P.No.26 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Erode.

For Appellant : Mr.D.Jaya Jothi for Mr.V.Balamurugane

For R3 : No appearance

For R6 : Mrs.R.Sreevidhya

Respondents 1,2,4 and 5-Not ready in Notice

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 21.10.2007 made in M.C.O.P.No.26 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Erode.

2.The appellant is claimant in M.C.O.P.No.26 of 2007 on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Erode. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.05.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the tanker lorry belonging to the 2nd respondent and directed the 3rd respondent/Oriental Insurance Company being insurer of the said lorry, to pay a sum of Rs.1,75,200/- as compensation to the appellant and dismissed the claim petition as against the respondents 4 to 6, who are driver, owner and insurer of the Tata safari, in which, the appellant was travelling at the time of accident.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was earning a sum of Rs.5,000/- per month by working as a driver. In the accident, the appellant sustained fracture on his neck and chest bones. The appellant examined the Doctor as P.W.4, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P18 to prove the injuries. The Tribunal without considering the same, awarded only a meagre sum of Rs.50,000/- towards disability. Due to the disability, the appellant could not do the work as he was doing earlier. The Tribunal awarded only meagre sum of Rs.5,200/- towards loss of income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 6th respondent/United India Insurance Company contended that the claim petition was dismissed as against the 6th respondent and 6th respondent is not liable to pay any compensation and therefore, prayed for dismissal of the appeal against the 6th respondent.

7.Though the learned counsel entered appearance on behalf of the 3rd respondent, at the time of arguments, there is no representation on behalf of the 3rd respondent.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 6th respondent/United India Insurance Company and perused all the materials available on record.

9. It is the contention of the appellant that in the accident, he sustained fracture on his neck and chest bones. The appellant examined the Doctor as P.W.4, who assessed the disability of the appellant as 50% and marked the disability certificate as Ex.P18 to prove the injuries. The Tribunal accepting the same, awarded a sum of Rs.50,000/- towards disability, which is proper. According to the appellant, he was earning a sum of Rs.5,000/- per month by working as a driver. He failed to prove the said contention. In the absence of any material evidence to prove the income of the appellant, the Tribunal considering the period of treatment taken by the appellant, awarded a sum of Rs.5,200/- towards loss of income during treatment period, which is in order. The appellant has taken treatment as in-patient in the hospital from 21.05.2002 to 07.07.2002 and subsequently, from 03.09.2002 to 07.09.2002. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,600/- is awarded towards attendant charges. The Tribunal awarded a sum of Rs.7,511/- altogether towards transportation & extra nourishment and Rs.15,000/- towards pain & suffering, which are meagre and hence, the same are hereby enhanced to Rs.5,000/- and Rs.25,000/- towards transportation & extra nourishment separately and Rs.20,000/- towards pain & suffering. The Tribunal has not awarded any compensation towards damage to clothes and hence, a sum of Rs.500/- is awarded towards damage to clothes. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and suffering	15,000	20,000	Enhanced
2.	Transportation and extra nourishment	7,511	5,000 25,000	Enhanced

3.	Damage to clothes	-	500	Granted
4.	Attendant charges	-	15,600	Granted
5.	Medical expenses	97,500	97,500	Confirmed
6.	Loss of income	5,200	5,200	Confirmed
7.	Permanent disability	50,000	50,000	Confirmed
	Total	1,75,211 rounded off to 1,75,200	2,18,800	Enhanced by Rs.43,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,75,200/- is hereby enhanced to Rs.2,18,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. This appeal is dismissed as against the respondents 4 to 6. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

kj

To

The Additional District Judge
The Motor Accident Claims Tribunal
Fast Track Court No.I, Erode.

WEB COPY

Copy to

The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Ms.R.Sree Vidya, Advocate Sr.22092
+1cc to Mr.V.Balamurugane, Advocate Sr.21769

C.M.A.No.198 of 2009

vg-I[co]
srg 22/04/2021



WEB COPY