

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

DATED : 29.07.2020

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.476 of 2010

(Through Video Conferencing)

S.Selvi ... Appellant/Petitioner

vs.

1.M.Sakthivel

2. S.Chandrapraba

3.The Branch Manager,
National Insurance Co. Ltd.,
Branch Office,
16, State Bank Road,
Coimbatore.

(R1 & R2 are not necessary party in
this appeal. Hence they are given up)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the Judgment and Decree made in
M.C.O.P.No.306 of 2008 dated 21.07.2009 on the file of the (1st
Additional District Judge, (Inch.) Fast Track Court No.I, Erode .

For Appellant : Ms.Revathy for
M/s.R.Nalliyappan

RR1 &2 : Given up

For R3 : Mr.S.Vadivel

J U D G M E N T

With consent of both the learned counsel for the appellant
and the learned counsel for the 3rd respondent, this Civil
Miscellaneous Appeal is taken up for final disposal.

2.The Civil Miscellaneous Appeal has been filed by the
appellant-claimant against the impugned Judgment and Decree
dated 21.07.2009 passed by the Additional District Judge, 1st
Additional District Judge (Incharge) Fast Track Court-I, Erode
in M.C.O.P.No.306 of 2008.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.60,500/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant/claimant. Aggrieved by the said compensation, the appellant/claimant has filed this Civil Miscellaneous Appeal to enhance the amount of compensation.

4. The appellant/claimant had suffered an injury in a motor accident that took place on 23.02.2006 at 09.15 a.m. The appellant/claimant was walking from north to south direction, when a mini bus bearing registration No. TN-37-W-3138 belonging to the 2nd respondent insured with the 3rd respondent, was driven in a rash and negligent manner by the 1st respondent-driver, as a result of which, the appellant sustained injuries.

5. The Tribunal held that the appellant was guilty of contributory negligence on the ground that the accident happened when the appellant was walking on the road instead of mud path. The Tribunal has thus awarded a sum of Rs.25,000/- at the rate of Rs.1,000/- per percentage of disability towards permanent disability.

6. The learned counsel for the appellant submits that the Tribunal erred in awarding a meagre compensation of Rs.65,500/- and further erred in fixing 50% liability on the part of the appellant. He further submits that the appellant was a tailor and sustained the bone fracture of the right foot, abrasion on the injury of right side hip and was permanently disabled from carrying on work as a tailor.

7. On the other hand, the learned counsel for the 3rd respondent-Insurance Company submits that the impugned order passed by the Tribunal was well reasoned and requires no interference and therefore submits that this civil miscellaneous appeal is liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for both sides and also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. The finding of the Tribunal holding that the appellant was guilty of contributory negligence for walking on the road and not on the mud path does not appeal to this Court. Considering the fact that the appellant was walking on the road which was not a main road, a small road where often pedestrian walk on the road, the appellant cannot be said to guilty of accident. The fact that there was an accident on a small road shows that it was only on account of the fault of the driver of

the insured vehicle. The driver of the insured vehicles are expected to drive slowly instead of driving with speed on such roads.

10. Under these circumstances, the order of the Tribunal fixing 50% of the liability on the appellant is liable to be interfered. Accordingly, the liability is fixed on the 3rd respondent-insurance company and the owner of the accident vehicle. It is noticed that the Tribunal has awarded a sum of Rs.25,000/- towards permanent disability, which appears to be meagre.

11. Considering the nature of injuries suffered by the appellant, the compensation awarded by the Tribunal at Rs.1,000/- per percentage of the injury. Considering the fact that the injury impacted the functional ability of the legs used by the appellant for tailoring work, I am inclined to enhance the amount Rs.25,000/- towards permanent disability. The amounts awarded by the Tribunal under the other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Pain & suffering	20,000/-	20,000/-	Confirmed
2	Transport and extra nourishment	5,000/-	5,000/-	Confirmed
3	Medical expenses	12,500/-	12,500/-	Confirmed
4	Permanent disability	25,000/-	50,000/-	Enhanced
5	Loss of income	3,000/-	3,000/-	Confirmed
Total		* 65,500/-	90,500/-	Enhanced by Rs.25,000/-

* The Tribunal has wrongly calculated the award amount as Rs.60,500/- instead of Rs.65,500/- . It appears to be a mistake in addition.

12. In the result, the civil miscellaneous appeal is partly allowed. The 3rd respondent Insurance Company is directed to deposit the enhanced amount of compensation of Rs.90,500/- as ordered by this Judgment, together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, 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/claimant is permitted to withdraw the award amount along with interest and cost after adjusting the amount, if any, already withdrawn, by filing suitable application before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd

To:

The Motor Accident Claims Tribunal
(1st Additional District Judge, (Inch.)
Fast Track Court No.I, Erode .

Copy to

The Section Officer

VR Section

High Court Chennai-104

C.M.A.No.476 of 2010

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pvs (co)

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