

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1442 of 2013

V.K.Nataraj

... Appellant/Claimant

Vs.

1.Mahalingam

2.C.Parameswari

3.The United India Insurance Co-Ltd.,
Branch Office,
Door No.11-A ,
Ambur - 635 802,
Vellore District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, for enhancement of the compensation amount awarded in the Judgment and Decree dated 03.09.2009 made in MCOP No.113 of 2007 on the file of the Motor Accidents Claims Tribunal/First Additional Sub Court, Erode.

For Appellant :Mr.S.Manokaran

For Respondents :Mr.S.Kaithamalai Kumaran for R1 & R2
Mrs.I.Malar for R3

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JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking enhancement of the compensation amount awarded in the Judgment and Decree dated 03.09.2009 made in MCOP No.113 of 2007 on the file of the Motor Accidents Claims Tribunal/First Additional Sub Court, Erode.

2.The case of the Appellant is that on 6.5.2006 at about 9.45 a.m. while he was travelling in the Maruthi Omni Van bearing Registration No.TN 01 K 2683 on NH-47 main road, near Vadakku Palanigoundampalayam privu, Uthukuli towards

Sengappalli, from East to West, the first respondent driven the vehicle in a rash and negligent manner and hit against a tamarind tree and thereby caused accident. Due to the impact, the appellant sustained grievous injuries and fractures in his right knee, right femur, right thigh, right hand, right little finger and all over his body and immediately he was admitted for treatment in Ganga Hospital, Coimbatore. In spite of the treatment, he became permanently disabled, hence he filed a petition before the Motor Accidents Claims Tribunal, Erode, claiming Rs.2,00,000/- as compensation.

3.The learned counsel for the appellant submitted that the appellant was aged 53 years at the time of accident and he was hale and healthy at the time of accident. He was working as power loom weaver and was earning not less than Rs.5,000/- per month. On account of the injuries and fractures sustained in the accident, he became permanently disabled and he was unable to walk, stand, sit or lift anything and he lost his entire earning capacity.

4.The learned counsel for the appellant further submitted that when the Doctor (PW2) assessed 15% disability, the Tribunal ought to have applied multiplier method while awarding compensation. The learned Tribunal has failed to note that the loss of earning power is different from permanent disability. The Tribunal has not awarded compensation towards both pecuniary and non pecuniary damages. The learned Tribunal has failed to note that the appellant was taking treatment as inpatient and he was completely immobilized for several months. The Tribunal has not considered the future medical expenses, physical discomfort, mental agony etc., in a proper perspective.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

6.On perusal of the records, it is observed that on the side of the Appellant, 15 documents were marked as Exs.P1 to P15 and the appellant and one Dr.N.S.Kumar were examined as witnesses. On the side of the respondents, Mr.Nandakumar was examined as witness and no document was marked.

7.The learned counsel for the third respondent contended that the policy taken by the second respondent is an Act Policy. But, in fact, it is a Liability Policy, and in the Liability Policy Rs.250/- has been paid for passengers and Rs.25/- has been paid for workman. That being the case, the Insurance Company cannot say that they are not liable to pay compensation to the claimant as they have already received a sum of Rs.250/- for passengers and Rs.25/- for workman and they are liable to pay the same.

8.The Tribunal has awarded meager amount towards transport and nourishment expenses and this Court is of the view that the amount shall be increased under the said heads. Accordingly, a sum of Rs.5,000/- each is awarded for transport and nourishment expenses. The doctor (PW2) assessed 15% disability. But the Tribunal fixed the disability meagerly as 7% and awarded Rs.15,000/- under the said head, and this Court is inclined to modify the same. Accordingly, the disability is fixed as 15% and Rs.30,000/- i.e. Rs.2,000/- per percentage of disability, is awarded for the said head. The Tribunal has not awarded any amount under the heads of physiotherapy and attender charges, and this Court is of the view that reasonable amount shall be awarded under the said heads. Accordingly, a sum of Rs.5,000/- each is awarded towards physiotherapy and attender charges.

9.In view of the above observations, 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
1.	Loss of Income (Rs.5000 x 2)	Rs.10,000	Rs.10,000	Confirmed
2.	Transport Expenses	Rs.1,000	Rs.5,000	Enhanced
3.	Nourishment Expenses	Rs.3,000	Rs.5,000	Enhanced
4.	Medical bills and Injuries sustained	Rs.30,000	Rs.30,000	Confirmed
5.	Pain and suffering	Rs.15,000	Rs.15,000	Confirmed
6.	Disability	Rs.15,000	Rs.30,000	Enhanced
7.	Physiotherapy	-	Rs.5,000	Granted
8.	Attender Charges	-	Rs.5,000	Granted
	Total	Rs.74,000	Rs.1,05,000	Enhanced by 31,000

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the third respondent insurance company is

directed to deposit the modified amount awarded by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant is permitted to withdraw the same by filing a formal petition before the concerned Court. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy/

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal/
First Additional Sub Judge, Erode.

2. The Section Officer,
VR Section,
High Court, Madras. +2 Copies

+1cc to Mr.N.Manokaran, Advocate SR.No.16428

+1cc to Mr.S.Kaithamalai Kumar, Advocate SR.No.16798

+1cc to Mr.T.Ravichandran, Advocate SR.No.16059

C.M.A.No.1442 of 2013

SSI (CO)

GMV (28/04/2021)

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