



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..11..2020
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Miscellaneous Appeal No.3380 of 2019

Sangili Pandian

... Appellant /Petitioner

-Versus-

1.C.Karunanithi

(R1 remained exparte before the Tribunal)

2.The National Insurance Company Limited,
Motor Third Party Claims Hub,
No.751, Anna Salai,
Chennai 600 002.

... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 13.06.2018 made in M.A.C.T.O.P.No.4235 of 2012 by the Motor Accidents Claims Tribunal (Special Sub Judge-II to deal with MCOP cases), Small Causes Court, Chennai.

For Appellant : Mr.A.G.F.Terry Chella Raja

For Respondents : Mrs.R.Sreevidhya for R2

R1 Ex parte

JUDGEMENT

The injured claimant not feeling satisfied with the compensation awarded by the Motor Accident Claims Tribunal (Special Sub Judge-II), Chennai, is before this court with the instant appeal seeking enhancement of compensation.

2. The case of the appellant/claimant is that on 26.06.2012 at about 09.00 p.m. when he was walking along GST road from East to West direction at Guduvanchery, near a Fish Market, a Bajaj Tempo bearing Regn. No. TN 22 Q 7576, owned by the 1st respondent and insured with the 2nd respondent, which was driven by its driver in a rash and negligent manner hit against the claimant as a result of which he sustained grievous injuries. He was immediately admitted in Government General Hospital at Chengalpattu and was taking treatment for two days on 28.06.2012 and 29.06.2012, thereafter he was admitted in Hindu Mission Hospital at Tambaram, where he was taking treatment from 15.07.2012 to 26.07.2012 as inpatient. He was a



Mason by profession and was earning a sum of Rs.9,000/- per month. Due to the injuries sustained in the road accident, he suffered 25% disability as certified by the doctor and he is unable to discharge his duties as before. Hence, seeking compensation of Rs.15,00,000/- from the respondents he filed the claim petition before the tribunal.

3. The 1st respondent, who is the owner of the vehicle which was insured with the 2nd respondent, was remained absent before the tribunal and therefore, he was set ex parte. The 2nd respondent Insurance Company contested the claim petition contending that the accident was taken place due to the negligent of the appellant and he alone responsible for the accident. Therefore, the appellant being tortfeasor cannot maintain the claim petition. Without prejudice to their contentions, the 2nd respondent contended that the appellant did not suffer any grievous injuries and the injuries suffered by him on his leg was only simple in nature. In any event, the compensation claimed by the appellant is highly exorbitant.

4. Before the tribunal, in order to prove his case, the appellant (claimant) examined himself as P.W.1 and further examined a Doctor by name Dr.Saravanabavanantham as P.W.2 and marked as many as 11 documents as Exs.P.1 to P.11. Neither any witness was examined nor any document was marked on the side of the respondents.

5. The tribunal on considering the materials available on record came to a conclusion that the accident was taken place due to the rash and negligent driving of the driver of the tempo which was insured with the 2nd respondent by the 1st respondent. Therefore, the respondents are liable to compensate the appellant for the injuries sustained by him in the road accident. So far as the quantum of compensation is concerned, even though the doctor had assessed the disability at 20%, the tribunal has found that the Doctor who had assessed the disability suffered by the appellant was not the doctor who had given treatment for him and therefore, concluded that the appellant suffered disability at 10% due to the injuries and awarded a total sum of Rs.1,43,300/- as compensation. Feeling aggrieved by the inadequacy of the compensation awarded by the tribunal, the claimant is before this court with the instant appeal.

6. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and also perused the records carefully.

7. The accident was taken place in the year 2012. The appellant sustained crush injury on his right foot. He was



diagnosed for foot necrotising facitis. According to the medical science, necrotizing facitis is a flesh eating disease which can cause the soft tissue like skin, muscle, ligaments, blood vessels and fat to die.

WEB COPY

8. Immediately after the accident, the appellant was admitted at Government Hospital, Chengalpattu where he was given treatment for two days on 28.06.2012 and 29.06.2012. The discharge summary which was marked as Ex.P.3 would show that he was taking further treatment from 15.07.2012 to 26.07.2012 at Hindu Mission Hospital, Tambaram, Chennai. The disability certified issued by the Doctor (P.W.2) would show that the appellant suffered 20% partial permanent disability. P.W.2 has also stated that since the appellant suffered serious injury on his right foot, disability has been assessed at 20%. However, the tribunal fixed the disability at 10% mainly on the ground that P.W.2, the doctor, who had given the certificate of disability was not the one who treated the appellant for the injuries. However, from the records available on record, it could be seen that the claimant undergone treatment for nearly 11 days. He had undergone surgery for the crush injury on his right foot. That was the reason why, the doctor (P.W.2) had assessed the partial permanent disability as 20%. The tribunal ought not to have reduced the percentage of disability merely because the Ex.P.11 disability certificate was not issued by the doctor who had treated the appellant. Therefore, going by the nature of injury and evidence of P.W.2 (Doctor) and also the available medical evidence, this court fix the disability at 20% as assessed by P.W.2. Therefore, the claimant is entitled to a sum of Rs.3,000/- for one percent of injury and in all $\text{Rs.3,000} \times 20 = \text{Rs.60,000/-}$ towards partial permanent disability instead of Rs.30,000/- awarded by the tribunal.

9. So far as the pain and sufferings is concerned, considering the nature of the injury and the trauma undergone by the appellant and also the period of treatment, granting a sum of Rs.16,000/- under this head instead of Rs.10,000/- awarded by the tribunal would be just and proper. Coming to the loss of income, the appellant was bed ridden for more than three months. For loss of income the tribunal awarded a sum of Rs.27,000/- This in the considered opinion of this court is very low. The appellant claimed that he was earning a sum of Rs.9,000/- per month. This was not seriously disputed by the respondents. Therefore, towards loss of income, in the considered opinion of this court, granting a sum of Rs.9,000/- per month for three months would be just and reasonable. Accordingly, a sum of Rs.27,000/- is granted towards loss of income. The amounts awarded by the Tribunal under the other heads appear just and reasonable and hence the same stand confirmed. Accordingly, the compensation awarded by the Tribunal under different heads are



WEB COPY

modified as follows:-

Serial Number	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Compensation for disability	30,000	60,000	Enhanced
2.	Pain and Sufferings	10,000	16,000	Enhanced
3.	Loss of Income	13,000	27,000	Enhanced
4.	Transport to Hospital	4,000	4,000	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Damage to clothes	2,000	2,000	Confirmed
7.	Medical Expenses	24,300	24,300	Confirmed
8.	Attender Charges	6,000	6,000	Confirmed
9.	Loss of Amenities of Life	10,000	10,000	Confirmed
10.	Disfigurement	5,000	5,000	Confirmed
	Total	1,14,300	1,64,300	Enhanced by Rs.50,000/-

In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,14,300/- awarded by the Tribunal is hereby enhanced to Rs.1,64,300/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent is directed to deposit the award amount directed above along with interest and costs as directed by the tribunal, 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, it will be open to the appellant to approach the tribunal for appropriate orders on withdrawal. Considering the facts and circumstances of the case, both parties shall bear their own costs in this appeal.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmk



To

1. The Special Sub Judge-II,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

Copy To

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

+1cc to Mr.R.Ravichandran, Advocate, S.R.No. 37197

+1cc to Mr.M.Malar, Advocate, S.R.No.37007

C.M.A.No.3380 of 2019

AD(CO)
GN(28/09/2021)