



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.08.2020

Pronounced on: 19.08.2020

WEB COPY

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1674 of 2015

Vadivel

...Appellant /Petitioner

/versus/

1.Ramesh

2.The Divisional Manager,

ICICI Lombard General Insurance Company Ltd.,

Chotabhai Centre,

2<sup>nd</sup> and 3<sup>rd</sup> Floor,

Nungambakkam High Road,

Chennai

...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 13.02.2015 made in M.C.O.P.No.103 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Namakkal.

For Appellant : M/s.Zeenath Begum

For R2 : M/s.R.Sree Vidhya for R2

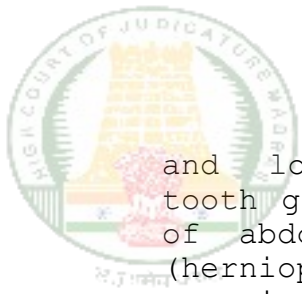
For R1 : unserved

J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the claimant before the Motor Accident Claims Tribunal, Nammakkal, being aggrieved by the quantum of compensation for the injuries he sustained in the motor accident occurred on 23/09/2006 at about 4.00 am.

2. The appellant herein while driving the Maruthi Omni Van bearing registration No. TN. 59 H 6525 on the Poonamallee to Thiruvallur Highways, near MelManalmedu, hit the TATA mini lorry parked without any indicator. The claimant was severely injured all over the body. He was admitted in the SRMC hospital and treated for 35 days. In the accident his left eye got injured



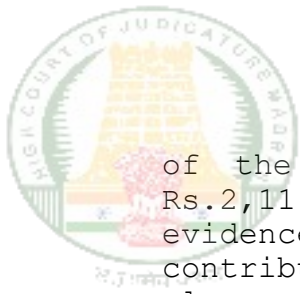
and lost his left eye vision. His jaw got fractured and 4 tooth got uprooted causing disfiguration of the face. The crash of abdomen was operated and 3 feet intestine was removed (hernioplasty). At the time of accident, he was self-employed carrying on electrical service and pandal business earning Rs.10,000 per month. Alleging negligence on the TATA van owner who negligently parked the vehicle without and red indicator, compensation of Rs.10,00,000/- against the TATA mini lorry owner and its insurer was claimed.

3. The claim petition was contested by the Insurance Company on the ground that the claimant is the actual tort-feasor. He drew his vehicle rash and negligently and ramped into the stationary van parked on the extreme left road margin during the early hours of 23/09/2006. The owner of the Maruthi Omni van and its Insurance Company alone are liable for paying compensation, if any. Since the accident took place due to the negligence of the Omni Van driver namely the claimant, the Insurance Company of the mini lorry which was stationed cannot be held liable. In case, if the Tribunal holds that there was negligence on the part of the TATA van owner also for not putting the red indicator, contribution of the claimant for the accident has to be taken note.

4. The Tribunal after considering the evidence let in by the claimant and the Insurance Company awarded compensation of Rs. 2,11,730/- after deducting 60% towards contributory negligence.

5. The learned counsel for the appellant contend that due to the accident he has sustained loss of left eye vision, 30% reduction of intestine, face disfigurement and loss of tooth. The Tribunal has not awarded just compensation for the injuries sustained by the claimant in the accident. No compensation awarded for loss of amenities. The Tribunal has awarded a paltry sum of Rs.10,000 for the pain and suffering. The wound certificate Ex.P-8 and the disability certificate Ex.P-10 were not properly considered by the Tribunal while arriving at just and fair compensation. Deduction of 60% for contribution on the part of the claimant is wrong and excessive. The claimant has lost his vision on the left eye, which has caused 25% permanent physical disability and more than 40% functional disability which has impaired the earning capacity of the claimant. The Tribunal has failed to take note of the loss of earning capacity.

6. The learned counsel appearing for the Insurance Company/respondent would submit that the accident took place at 4 o'clock in the early morning while the claimant was driving his Omni Van and dashed at the mini lorry parked on the margin



of the road. The Tribunal has awarded just compensation of Rs.2,11,730/- taking note of Exhibit P-8 and Ex.P-10 and the evidence given by the doctors PW -2 and PW-3., and the contribution of the claimant for the accident. However, would also state that, taking note of the huge medical expense incurred by the claimant and the nature of disability sustained, the composition may be enhanced reasonably towards disability and pain and suffering.

7. The Tribunal considering Ex.P-6 discharge summary, Ex.P-8 wound certificate and Ex.P-10 disability certificate has held that the permanent disability is 55%. Contributory negligence of 60% is fixed based on facts available in the FIR Ex.P-1, Accident Report Ex.P-2 and the evidence of DW-1. Rs 3,52,826/- awarded towards medical expenses based on the medical bills Ex.P-5. The monthly income of the claimant was notionally fixed at Rs.6,000/- pm in the absence of evidence and Rs.24,000/- awarded for loss of income for 4 months. The break up of the Tribunal award is as below:-

|                                                                                                  |                  |
|--------------------------------------------------------------------------------------------------|------------------|
| Partial Permanent Disability: 55% x Rs.2000                                                      | Rs<br>1,10,000/- |
| Loss of Income 6000 x 4                                                                          | Rs<br>24,000/-   |
| Transport                                                                                        | Rs<br>5,000/-    |
| Damages to cloth                                                                                 | Rs<br>1,000/-    |
| Nutritious food                                                                                  | Rs<br>10,000/-   |
| Attender's charge ( Rs 500/- per day x 33 days of inpatient treatment: 23/09/2006 to 25/10/2006) | Rs<br>16,500/-   |
| Medical expenses                                                                                 | Rs<br>3,52,826/- |
| Pain and sufferings                                                                              | Rs<br>10,000/-   |

Out of total estimated loss of Rs 5,29,326/- 60% deducted towards contribution and Rs 2,11,730/- awarded as compensation.

8. On considering, the rival submission made by the learned counsels for respective parties, this Court of the view that, the award of the Tribunal requires modification on certain heads. Particularly, the evidence of the doctors PW-2 and PW-3 and the exhibits discharge summary, wound certificate and disability certificates indicates the claimant has lost his left eye vision. The disability is permanent. The loss of one eye vision will have a bearing in his earning capacity. For the



function disability, this Court inclined to apply multiplier. For 33 days in-patient treatment and after thereafter, under pain and sufferings, the claimant deserves enhancement. As far as contributory negligence is concerned, the assessment of the Tribunal is modified as 50% Accordingly, the award is modified as below:-

|                                                                                                          |               |
|----------------------------------------------------------------------------------------------------------|---------------|
| Partial Permanent Disability: 25% functional disability due to loss of vision:Rs 6000 x 12 x 16 x 25/100 | Rs 2,88,000/- |
| Loss of Income Rs.6000 x 6                                                                               | Rs 36,000/-   |
| Transport                                                                                                | Rs 10,000/-   |
| Damages to cloth                                                                                         | Rs 1,000/-    |
| Nutritious food                                                                                          | Rs 10,000/-   |
| Attender's charge ( Rs 500/- per day x 33 days of inpatient treatment: 23/09/2006 to 25/10/2006)         | Rs 16,500/-   |
| Medical expenses                                                                                         | Rs 3,52,826/- |
| Pain and sufferings                                                                                      | Rs 20,000/-   |
| Loss of amenities                                                                                        | Rs 15,000/-   |

Out of total estimated loss of Rs. 7,49,326/- rounded off to Rs 7,50,000/- after deduction 50% towards the contributory negligence, the compensation payable to the claimant is thereby enhanced from Rs 2,11,730/- to Rs 3,75,000/-.

9. The Insurance Company, 2<sup>nd</sup> respondent is directed to deposit the award amount with interest at the rate of 7.5% from the date of application (excluding the period between 1.11.2011 and 12.08.2013) till the date of deposit. The time for deposit is eight weeks from today.

10. In the result, the Civil Miscellaneous Appeal is partly allowed as per the above terms with costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

rpl



To

1.The Motor Accident Claims Tribunal,  
Sub Court, Namakkal.

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

C.M.A.No.1674 of 2015

LN(CO)  
CB(01/09/2021)