

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

PRONOUNCED ON : 13.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2368 of 2012

(Through Video Conferencing)

R.Palani Appellant/Petitioner
vs.

1.P.Anand

2.The Oriental Insurance Company Ltd., Rep.
by its Branch Manager,
Jambu bala Complex,
29B, Katpadi Road, Vellore-4.

3.Lalli

4.The New India Assurance Company Ltd., rep.
By its Branch Manager,
110, Gandhi Road, Arni.

(R1 and R3 exparte before the Tribunal)

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.07.2006 made in M.C.O.P.No.380 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court), Arni.

For Appellant : Mr.P.Satheesh kumar

For 2nd Respondent : Mr.M.J.Vijayaraghavan

For 4th Respondent : Mr.S.Dhakshnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the impugned Judgment and Decree dated 14.07.2006 passed by the Motor Accident Claims Tribunal ((Sub Court), Arni in M.C.O.P.No.380 of 2002.

2. By the impugned Judgment and Decree, the Tribunal has computed a compensation of Rs.77,500/- for the injury suffered

by the appellant but has deducted 50 % on account of contributory negligence on the part of appellant-claimant-driver of the mini lorry and has thus awarded a compensation of Rs.38,750/- to the appellant/claimant together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit

3. Aggrieved by deduction and the low amount of compensation awarded, the present Civil Miscellaneous Appeal has been filed by the appellant/claimant for enhancement of compensation.

4. The facts of the case is that the appellant-claimant met with an accident on 25.08.2002 at about 7.15 p.m. According to the appellant, he was driving a mini goods lorry belonging to the 3rd respondent which was insured with the 4th respondent. The said mini goods lorry had collided against a bus coming from the opposite direction belonging to the 1st respondent insured with the 2nd respondent, as a result of which, the appellant sustained injuries.

5. In the claim petition, the appellant-claimant admitted that both the bus driver and the driver of the lorry i.e. Himself were driving the respective vehicles in a rash and negligent manner collided with each other.

6. The Tribunal after considering the evidence on record, awarded a total compensation of Rs.77,500/- and since the appellant was held guilty of contributing negligence, the appellant was held entitled to a sum of Rs.38,750/- after deducting 50% as compensation under the following heads:

S.No.	Heads	Amount awarded by the Tribunal
1	Grievous injuries	Rs. 5,000/-
2	Permanent disability	Rs. 46,000/-
3	Pain & suffering and extra nourishment	Rs. 20,000/-
4	Loss of income	Rs. 10,000/-
5	Future loss of income	Rs. 10,000/-
6	Transportation and x-ray	Rs. 1,500/-

S.No.	Heads	Amount awarded by the Tribunal
	Total	Rs. 77,500/-

7. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent- Insurance Company.

8. From the petition filed by the appellant before the Tribunal, it is noticed that the appellant suffered multiple injuries all over his body with multiple fracture of his left arm and left knee and injury on the mouth.

9. Wound Certificate was filed as Ex.P.2, while Discharge Summary was filed as Ex.P.3. As per Ex.P.12- Disability Certificate marked through P.W.2, the appellant was assessed 46% disability, the Tribunal has thus awarded a sum of Rs.46,000/- towards disability at the rate of Rs.1,000/- per percent of disability.

10. It has also awarded Rs.5,000/- towards grievous injuries. In my view, the Tribunal ought to have awarded a slightly higher compensation towards injury and permanent disability at Rs.2,000/- per percentage. Therefore, a consolidated amount of Rs.92,000/- (Rs.2,000 x 46) is awarded towards permanent disability and instead of Rs.5,000/- and Rs.46,000/- towards grievous injuries and permanent disability.

11. Considering the nature of injuries suffered by the appellant, a sum of Rs.5,000/- towards pain and suffering for the nature of injuries appear to be very low. Therefore, it is increased to Rs.25,000/-. The Tribunal also ought to have awarded compensation separating under the heads of extra nourishment and transportation and the same are hereby increased to Rs.5,000/- each under the same. The Tribunal has awarded under other heads appear to be just and proper. Therefore, they are not disturbed. The finding of the Tribunal fixing contributory negligence cannot be faulted as the appellant has admitted he was at fault. Since there is a contributory negligence as 50% on the part of the appellant-claimant and 50% of the contributory negligence on the part of the 2nd respondent- Insurance Company as per the Tribunal.

12. Consequently, I am inclined to modify the compensation awarded under the various heads as follows:

S.No.	Heads	Amount awarded by this Court
1	Permanent disability & Injury	Rs. 92,000/-
2	Pain & suffering and extra nourishment	Rs. 25,000/-
3	Loss of income	Rs. 10,000/-
4	Future loss of income	Rs. 10,000/-
5	X-ray	Rs. 500/-
6	Transportation	Rs. 5,000/-
7	Extra nourishment	Rs. 5,000/-
	Total	* Rs. 1,47,500/-

* Total award amount : Rs.1,47,500
Less 50% negligence on the part of the appellant : Rs. 73,750

Net Amount : Rs. 73,750/-

13. Accordingly, this civil miscellaneous Appeal is partly allowed and 50% liability is fixed on the 2nd respondent/Insurance Company and the compensation amount awarded by the Tribunal at Rs.38,750/- is hereby enhanced to Rs.73,750/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of such deposit.

14. Therefore, the 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the

appellant is permitted to withdraw the same with proportionate interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To:-

The Motor Accidents Claims Tribunal,
(Sub Court), Arni.

Copy to

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

+1cc to Mr.S.Dhakshnamoorthy, Advocate Sr.33828

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srg 05/05/2021



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