

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3213 of 2011

S. Arunkumar @ Silambarasan

...Appellant

Versus

1.Mr. K. Anandan S/o. Krishnaji Rao,

2. The Branch Manager,
National Insurance Co. Ltd.
Post Box No.10, Anuradha Complex,
3rd Floor, Bangalore Road,
Krishnagiri.

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 02.03.2011 made in M.C.O.P.No.871 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondent-2 : Mrs. N.B. Surekha

For Respondent-1 : Not Ready- Ex-parte

J U D G M E N T

सत्यमेव जयते

The claimant before the Tribunal has preferred the appeal against the Judgment and order in M.C.O.P.No.871 of 2005 dated 02.03.2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri seeking for enhancement of compensation.

2. The brief of the case is as follows:

On 24.12.2003, when the claimant/appellant herein was travelling in the lorry bearing registration no.KA 32 5671 as a cleaner belonging to the 1st respondent and insured with the 2nd respondent towards Hiraiyur Town, near Hiraiyur Court on NH4

road, the 1st respondent drove his lorry in a rash and negligent manner and applied brake suddenly while fast moving of the lorry. Due to the impact of sudden brake, the claimant/appellant herein fell down from the vehicle and sustained grievous injuries and was treated in the hospital as inpatient. In view of the injuries sustained in the road accident, the claimant/appellant herein filed a claim petition in M.C.O.P. No.871 of 2005 seeking for compensation of Rs.8,00,000/- (Rupees Eight Lakh Only) on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. After trial, the claimant/appellant herein awarded a sum of Rs.1,25,228/- as compensation to the claimant/appellant herein. Not satisfied with the award, the claimant/appellant herein has filed the present appeal seeking for enhancement of compensation.

3. The learned counsel for the appellant would submit that the Tribunal has awarded a meagre sum of Rs.1,25,228/- without considering the injuries sustained by the claimant/appellant herein like fractures in the right superior and inferior pubic rami, right iliac bone, and right sacrum and abrasion over right shoulder 3 cm X 2 cm and over supra pubic lower right side of abdomen and ilica region 15 cm x 6 cm multiple injuries all over the body even though it was confirmed the fact of the accident due to rash and negligent driving of the driver of the lorry/1st respondent herein. Hence, the appellant is entitled to get compensation as prayed for.

4. On the other hand, the learned counsel for the 2nd respondent would submit that the appellant was awarded the compensation after considering the entire oral and documentary evidence. Hence, there is no need to interfere with the award passed by the Tribunal.

5. Heard, the learned counsel for both parties and perused the entire oral and documentary evidence placed before this Court. The 1st respondent remained absent before the Tribunal as well as before this Court. Hence, the 1st respondent was set ex-parte before the Tribunal as well as before this Court.

6. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not dispute. The entitlement of the claimant is alone disputed seeking for enhancement of compensation after considering the age and avocation as well as injuries sustained by the claimant/appellant herein.

7. On perusal of the award, the Tribunal has confirmed that the accident had happened due to the rash and negligent driving of the 1st respondent. It is corroborated comparing the oral evidence of P.W.1 along with Ex.A1, F.I.R. Neither any oral evidence was let in nor documents were marked on the side of the 2nd respondent to dispute the claim of the claimant/appellant herein. Further, the appellant is stated to have been worked as cleaner in the aforesaid lorry drawing salary of Rs.4000/-pm whereas the loss of income has been fixed as Rs.3,000/- in the absence of proof of income. However, after arriving the monthly income of Rs.3,000/-, the Tribunal has awarded only Rs.2,000/- towards permanent disability as $35 \times 2000 = \text{Rs.}70,000/-$ instead of Rs.1,05,000/- (ie. 35×3000). Having considered the nature of injuries and disability certificate/Ex.A10 @40% issued by Doctor/P.W.2, this Court is inclined to fix permanent disability @ 40% as certified by the Doctor/P.W.2. As such, the permanent disability is hereby awarded a sum of Rs.1,20,000/- (i.e. 40×3000) instead of Rs.70,000/- as awarded by the Tribunal. Further, the amount awarded by the Tribunal under the other heads are modified which are to be applicable, inclusive of aforesaid head as details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent disability	120000.00
2	Pain, shock and Sufferings	20000.00
3	Extra-nourishment	5000.00
4	Medical Expenses	20000.00
5	Attendant Charges	5000.00
6	Transport	5000.00
Total Amount		175000.00

8. Thus, the compensation of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) is awarded to the appellant herein with interest @ 7.5% p.a. from the date of petition till the date of deposit of award amount. The Insurance Company/2nd respondent herein is directed to deposit the aforesaid award amount within a period of four weeks from the date of receipt of copy of this order after deducting the amount deposited if any.

9. On such deposit, the claimant/appellant herein is permitted to withdraw the modified award amount as awarded by this Court.

10. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.871 of 2005 dated 02.03.2011. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Krishnagiri.

Copy to

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

+1cc to M/s.Mukund R.Pandian, Advocate Sr.15026
+1cc to M/s.N.B.Surekha, Advocate Sr.15050

C.M.A.No.3213 of 2011

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