

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3291 of 2011

A. Shanavas ...Petitioner/Appellant

Vs

1.Stanely Sampathkumar

2.The Divisional Manager,
National Insurance co. Ltd.,
Divisional Office,
No.18,Flat No.181-186-N-1,
B.M.T. House, Connaught Place,
New Delhi. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree dated 02.02.2011 made in M.C.O.P.No. 1092 of 2006 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 R1 : Not ready in notice

J U D G M E N T

This appeal has been filed by the appellant against the Judgment and Decree dated 02.02.2011 made in M.A.C.T.O.P.No. 1092 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

2.The appellant is the claimant. The first respondent and second respondents are the owner and insurer of the offending vehicle.

3.It is the case of the appellant that on 11.12.2004 at about 3.30 a.m the appellant was travelling in a Maruti Omni Van bearing Registration No.TN.28/L/0051 belonging to the 1st

respondent and insured with the 2nd respondent. When the Van was coming near Kannandhalli Village in Mathur to Krishnagiri Road, the driver of the said van was driving the Maruthi Van in a rash and negligent manner at an uncontrollable speed without adhering traffic rules and without sounding horn and dashed on the right side palmyrah tree and due to the impact the appellant and other inmates of the van sustained injuries. The accident occurred only due to the rash and negligent driving of the driver of the van. Hence, the appellant/claimant filed a claim petition, before the Tribunal seeking Rs.6,00,000/- as compensation.

4.The Tribunal Considering the materials available on record awarded a sum of Rs.1,23,899/- as compensation with interest at 7.5% p.a from the date of petition till the date of realization.

5.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6.In order to prove the claim before the Tribunal, on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and 10 documents viz., Ex.P1 to Ex.P10 were marked. On the side of the respondent no witnesses was examined and no documents were adduced.

7.The learned counsel for the appellant submitted that the appellant is a student of B.Sc in Islamia College, Vaniambadi and assisting his father in the Mutton stall. Due to the injuries sustained in the accident he was not able to concentrate on his studies and he was not able to sit, stand or walk freely. He would further contend that the Tribunal has not awarded anything under the head loss of amenities. In any event the award passed by the Tribunal is very low, when compared to the injuries sustained in the accident. Therefore, he prays for enhancement of compensation.

8.The learned counsel for the second respondent/Insurance Company denied the manner of the accident. He would also contend the averments in the claim petition are without any basis. In any event the award passed by the Tribunal is very excessive.

9. On a perusal of the order passed the Tribunal, the negligence aspect was discussed elaborately. Whether the accident was occurred due to the rash and negligent act or the driver of the omni van? P.W.1/Appellant was examined and he deposed that the rash and negligence act of the driver of the 1st respondent's vehicle is the cause for the accident and his evidence is strengthened by recitals in Ex.P.1/F.I.R. Based on the available evidence the Tribunal arrived at a conclusion that the accident has occurred due to the rash and negligent driving

of the driver of the van. The 2nd respondent even though denied the manner of the accident, but failed to prove that the negligence exists on the part of the appellant. Hence, the finding of the Tribunal does not require interference by this Court and the same is confirmed as such.

10. With regard to quantum, on the basis of Ex.A.2 to 4 the Tribunal has awarded Rs.20,000/- and Rs.7,000/- towards pain and suffering and Transportation (Expenses on attenders and Extra Nourishment). Considering Ex.A.8/Medical bills the Tribunal has awarded Rs.26,899/- towards medical bills. P.W.2/Dr.D.V.Gandhi examined the appellant and assessed the disability at 45% and the Tribunal has taken 35% as disability and determined Rs.2,000/- per percentage and quantified Rs.70,000/- as compensation for disablement. Thus, the total compensation is quantified to Rs.1,23,899/- .

11. In view of the above this Court observed that no amount was awarded towards Damage to clothes. Hence, Rs.1,000/- is awarded towards the same respectively. The Tribunal has awarded Rs.7,000/- towards the Transport, Expenses on attenders and Extra Nourishment. Hence, the same is modified as Rs.5,000/- each towards Transportation, Extra Nourishment and attender charges. All other heads remains intact. Thus, the award passed by this Court is as follows:

S.No.	Amount awarded by the Tribunal	Amount awarded by this Court
Compensation for her 35% of diablement (35xRs.2000)	Rs.70,000/-	Rs.70,000/-
Compensation for his pain and suffering	Rs.20,000/-	Rs.20,000/-
Towards Medical bills	Rs.26,899/-	Rs.26,899/-
Transport, Expenses on attenders and Extra Nourishment	Rs.7,000/-	
Transport		Rs.5,000/-
Extra Nourishment		Rs.5,000/-
Damage to clothes	-Nil-	Rs.1,000/-
Attender Charges	-Nil-	Rs.5,000/-
Total	Rs.1,23,899/-	Rs.1,32,899/-

12. With the above said modification the award amount is enhanced to Rs.1,33,000/- (Rs. 1,32,899/- is rounded off to Rs.1,33,000) from Rs.1,23,899/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the amount awarded by this Court along with 7.5% interest p.a from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn by filing appropriate application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn
To

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

Copy to

The Section Officer,
VR Section,
High Court, Chennai-104.

+1cc to Mr.N.B.Surekha, Advocate Sr.11735
+1cc to Mr.Mukund R.Pandiyar, Advocate Sr.13321

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