

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.07.2020	Pronounced on: 23.07.2020
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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.2485 of 2015

Sambasivam

...Appellant /Petitioner

/versus/

1.Selvam

(Since R1 remained exparte before the Tribunal his presence may be dispensed with)

2.National Insurance Co.Ltd.,
No.378, Mint Street,
Chennai-79.

...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 30.11.2007 and made in M.A.C.T.O.P.No.4967 of 2005 on the file of the Motor Accident Claims Tribunal and III Court of Small Causes, Chennai.

For Appellant : Mr. Terry Chella Raja,

For R2 : Mr.J.Michel Visuvasam

For R1 : Exparte

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, is preferred by the claimant/accident victim seeking enhanced compensation.

2. Before the Motor Accident Claims Tribunal, Chennai, for the injury sustained by him in the road accident on 24.07.2005. The appellant sought for compensation of Rs.4,00,000/- (Rupees Four lakhs only) restricted to Rs.2,00,000/- for the purpose of Court fee.

3. According to the appellant, on 24.07.2005, at about 17.00 hours when he was walking along the left side of the Jamal

Sawkar street, Old Washermenpet, Chennai, he was hit by an auto bearing registration No.TN 01 T 2988, which was driven in a rash and negligent manner. He was admitted in the Government Stanley Hospital, Chennai and was discharged after 82 days on 14.10.2005. Later, he took treatment privately at his native place in Andhra Pradesh.

4. In support of his claim petition, the appellant has examined himself and one Dr.N.Saichandran, 12 Exhibits were marked. The appellant claimed himself to be a mason, earning a sum of Rs.250 per day. He claims that the fracture sustained to him has caused 60% partial permanent disability. The Tribunal, on assessing the evidence awarded a total compensation of Rs.1,66,423/-. The reasoning for awarding the said amount has been stated at paragraph No.10 of the award, which is extracted below:-

"10.The claim of the petitioner is that he was working as a mason and was earning Rs.7,500/- p.m., there is no documentary proof for his income. But still as a mason he had every possibility of earning of Rs.5,000/-p.m. Due to the injuries sustained in the accident he would have been disabled from attending his job for a period of 4 months. Therefore the loss of earning is Rs.20,000/- and the same is allowed. For transportation, the petitioner would have spent Rs.2,000/- and the same is allowed. For extra nourishment this petitioner would have spent Rs.2000/- and the same is allowed. For damages to clothing and articles this petitioner is awarded a compensation of Rs.1000/-. As per medical bills for deleting the nameless bills and bill in the name of Asha Kumari petitioner has spent a sum of Rs.55,422.77/- and the same is rounded up to Rs.55,423/- and the same is allowed. For other expenses, this petitioner is awarded a sum of Rs.1000/- As per Ex.P11 the petitioner has sustained 60% partial permanent disability which is on the higher side hence this Tribunal reduces the same to 40% and for the same this petitioner awarded a compensation of Rs.40,000/-.

Non pecuniary damages:-

As per Ex.P1 the petitioner has sustained 2 grievous injuries and for their pain and sufferings he is awarded a compensation Rs.25,000/-. For loss of amenities he is awarded a sum of Rs.10,000/-, for loss of expectation of life he is awarded a sum of Rs.10,000/-

In toto, this petitioner is entitle to a compensation of Rs.1,66,423/-."

5. In this appeal, the Learned Counsel appearing for the appellant would submit that the Tribunal has erred in disbelieving the disability certificate issued by P.W.2 and marked as Ex.P11. The Doctor P.W.2 has assessed the disability of the appellant at 60%. Whereas, the Tribunal has reduced it to 40%. Further, the learned counsel would submit that fixation of Rs.40,000/- for disability is too low. Besides it is also submitted that the Tribunal has failed to take into consideration the estimated expenses for removal of plate implanted while undergoing surgery.

6. The learned counsel appearing for the Insurance company would submit that it is true that the appellant sustained fracture and was in hospital for 82 days as in-patient but all the medical expenses met out by the appellant has been taken into consideration by the Tribunal and it has awarded a sum of Rs.55,423/- towards medical expenses.

7. Regarding the disability, the Tribunal, on considering the disability certificate and the evidence of PW.2, after assessing the claimant, who was present before him has recorded that the percentage of disability assessed by PW.2 and reflected in Ex.P.11 is on higher side. The accident occurred in the year 2005 and at that time the compensation for disability was fixed at the rate of Rs.1000/- per percentage of disability. Therefore, there is no error in the award.

8. On considering the submission made by the learned counsels on either side, this Court finds that there is no error in the quantum of compensation arrived by the Tribunal, except the exercise of discretion fixing the percentage of disability as 40%.

9. From the discharge summary-Ex.P1 and disability certificate-Ex. P-11, this Court finds that the appellant has sustained fracture of two bones in his left leg and 5th

metacarpal bone. The Doctor has assessed 60% partial permanent disability. The Tribunal has assessed the disability as 40%. Taking note of the fact that the appellant was hospitalised for nearly 82 days, which indicates the gravity of the injury and disability, this Court fix the percentage of disability as 50% and compensation of Rs.40,000/- awarded by the Tribunal is enhanced from Rs.40,000/- to Rs.50,000/-.

10. For the pain and sufferings, the Tribunal has awarded Rs.25,000/-. Taking note of the double fracture in the left leg and metacarpal, this Court is of the view that the appellant is entitled for another sum of Rs.10,000/-, since the sufferings was prolonged one confining the appellant in the hospital for nearly 82 days. Thus, the compensation awarded is enhanced by Rs.20,000/- in total. (Rs.10,000/- from P.P.D and Rs.10,000/- for pain and suffering).

11. From the records, this Court finds that the trial Court has passed the award on 30.11.2007, whereas, the appellant has preferred the appeal after lapse of 7 years with the delay of 2186 days. The said delay was condoned on 14.10.2015 on condition that, if the appellant/claimant succeed in the appeal, he is not entitled to receive any interest for the delay period. Therefore, the appellant shall not be entitled for any interest for the period of delay.

12. As a result, the Civil Miscellaneous Appeal is partially allowed. The appellant is entitled for further compensation of Rs.20,000/- with interest at the rate of 7.5% per annum from the date of numbering the petition (29.07.2005) till the date of the order of this appeal with interest at the rate of 7.5% p.a excluding the period of delay. The respondent/Insurance Company shall deposit the amount within a period of 60 days from the date of receipt of copy of this order. Failing which, the appellant shall be entitled for further interest at the rate of 7.5% from the date of this order till the realisation. The Insurance Company shall recover the same from the owner of the vehicle. No costs.

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Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rpl

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To

1.The III Judge,
Motor Accident Claims Tribunal and III Court of Small Causes,
Chennai.

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

+1 cc to Mr.J.Micheal Visuvasam Advocate sr25241

C.M.A.No.2485 of 2015

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