

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3393 of 2012

Sivalingam

.. Appellant/Petitioner

Versus

1.R. Shanthi (set exparte, given up)

2.The Branch Manager,

ICICI Lombard General Insurance Company Ltd.,

Branch Office, Swaranambigai Plaza,

S.F.No.6/5, Block No.7,

Ward C, Omalur Main Road,

Near Bus stand,

Salem - 636 009.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 29.09.2008 made in M.C.O.P.No.360 of 2006 on the file of the Motor Accidents Claims Tribunal, Dharmapuri at Krishnagiri (Principal Subordinate Judge) and allow the above C.MA.

For Appellant : Mr.V.Kumaravelan

For R2 : Mrs.R.Sreevidhya

R1 - Given up

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 29.09.2008 passed by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri in M.C.O.P.No.360 of 2006.

2. The brief facts leading to the filing of the instant appeal are as follows:

(i) On 20.08.2006, at about 6.30 a.m., the appellant was standing on the extreme left side mud portion of the road with

his TVS 50 Moped bearing Registration No.TN29-B-8703. At that time, the Ford Ikon Car bearing Registration No.TN48-C-0099 belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the appellant. As a result, the appellant was thrown out and sustained grievous injuries. Immediately, he was taken to the Government Head Quarters Hospital, Dharmapuri. After taking first aid, he was taken to Hosmat Hospital, Bangalore, where, he was given treatment a day and then he was admitted in Ganga Hospital, Coimbatore on 21.08.2006 and took treatment till 29.08.2006. Thereafter, he had taken treatment in Private Nursing Home at Krishnagiri and Dharmapuri. Due to the accident, he had sustained crush injury over his left leg. His left leg below knee was amputated. He had lost his left leg and had become lame.

(ii) The Appellant / Claimant preferred a claim petition before the Motor Accidents Claims Tribunal in M.C.O.P.No.360 of 2006 seeking compensation of Rs.20,00,000/-.

(iii) The Motor Accidents Claims Tribunal, by its Award dated 29.09.2008 in M.C.O.P.No.360 of 2006 directed the respondents to pay the Appellant a sum of Rs.2,37,236/- together with interest at the rate of 7.5%, per annum from the date of petition till the date of realisation.

(iv) Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed by the appellant seeking enhancement of compensation.

3. Heard, Mr.V.Kumaravelan, learned Counsel for the appellant and Mrs.R.Sreevidhya, learned counsel for the second respondent.

4. The learned counsel for the appellant would submit that in the accident, the claimant sustained crush injury over his left leg, his left leg below knee was amputated, he lost his left leg and has become lame. Due to the injuries, he cannot do any work and sustained permanent disablement and loss of earning power. Further, the learned counsel would submit that the tribunal awarded very meager amount in respect of pain and sufferings, loss of earnings etc., therefore, prayed for enhancement of the compensation.

5. Rebutting the submission of the learned counsel for the appellant, the learned counsel for the second respondent / insurance company contended that the driver of the first respondent was driving the car slowly and carefully by blowing horn sound and the accident occurred only due to the rash and negligent driving of the TVS 50 which was driven by the appellant. Further, the learned counsel contended that the appellant had no valid driving licence to drive the TVS 50. Therefore, prayed for dismissal of the appeal.

6. Having considered the submissions made by the learned counsels on both sides and having considered the materials available on record, this Court is of the view that due to the crush injuries, the appellant's left leg was amputated and he has sustained 55% disability. The sum of Rs.1,000/- awarded per percentage of disability is found to be very meager, hence the same is modified as Rs.2,000/- per percentage. The Tribunal has awarded only Rs.18,000/- towards Pain and sufferings and Rs.1,500/- towards Extra Nourishment. Due to the amputation of the left leg, the appellant definitely would have suffered from severe pain and would have spent more money for Extra Nourishment. Hence, this Court is inclined to enhance the award amount under the heads of Pain and sufferings and Extra Nourishment. Accordingly, Rs.20,000/- is awarded for Pain and sufferings and Rs.5,000/- is awarded for Extra Nourishment. The sum awarded under the heads of Bystander Expenses and Damage to Clothes and Articles is found to be meager, hence this Court enhances the same as Rs.5,000/- each under the said heads. The sum awarded under the other heads i.e. Rs.75,000/- for Artificial Limp, Rs.46,836/- for Medical Expenses, Rs.10,000/- for Loss of earnings and Rs.26,900/- for Transportation charges, is found to be reasonable, hence the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows :

Heads	Sum Awarded by the Tribunal (Rs.)	Sum Modified by this Court (Rs.)
Permanent Disability	55,000/-	1,10,000/-
Artificial Limp	75,000/-	75,000/-
Medical Expenses	46,836/-	46,836/-
Loss of Earnings	10,000/-	10,000/-
Pain and Sufferings	18,000/-	20,000/-
Extra Nourishment	1,500/-	5,000/-
Transport Expenses	26,900/-	26,900/-

Heads	Sum Awarded by the Tribunal (Rs.)	Sum Modified by this Court (Rs.)
Damage to Clothes and Articles	1,000/-	5,000/-
Bystander expenses	3,000/-	5,000/-
Total	2,37,236/-	3,03,736/-

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the second respondent / insurance company is directed to deposit the said amount of Rs.3,03,736/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the same as per the apportionment made by the Tribunal by filing a formal petition before the Tribunal, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

AT

To

The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal,
Krishnagiri.

Copy To

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

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.10249

C.M.A.No.3393 of 2012

VG II (CO)
GMY (21/04/2021)