

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2020
PRONOUNCED ON : 24.08.2020

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.422 of 2015

Chinnapapa,
W/o.Venkatesan,
Residing at
No.243, karthikeyan Nagar,
Yendhal Village,
Thiruvannamalai District and Town.Appellant/Claimant

vs

1.Ravi,
S/o.Ramachandran,
No.5, Mettu Street,
Chinna Kangeyanoor Village,
Thiruvannamalai Taluk and District.
(R1 set exparte before the Tribunal)

2.The Divisional manager,
The National Insurance Co.Ltd.,
No.19, Officers Line,
Vellore.

....Respondents/Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 28.02.2011 passed in M.A.C.T.O.P.No.513 of 2009, on the file of the Motor Accidents Tribunal and Additional Sub Judge, Tiruvannamalai.

For Appellant : Ms.M.Malar

For R.1 : Set Exparte

For R.2 : Mr.S.Vadivel

JUDGMENT

This civil miscellaneous appeal has been filed against the decree and judgment dated 28.02.2011 passed in M.A.C.T.O.P.No.513 of 2009, on the file of the Motor Accidents Tribunal and Additional Sub Judge, Tiruvannamalai.

2. This appeal is preferred by the accident victim for enhancement of compensation. Not satisfied with the compensation of Rs.1,42,000/-, awarded for the injury sustained and loss incurred by the claimant, the present appeal is filed on the ground that the Tribunal ought to have fixed the income of the victim as Rs.4,000/- per month as agricultural coolie. But, the Tribunal has fixed only Rs.3,000/- per month.

3. The contention of the appellant is that, he sustained injuries like Grade I compound fracture of shaft of femur of right, Grade II compound fracture in the Tibia and fibula in left leg in proximal $\frac{1}{4}$, deformity and swelling over the left leg upper $\frac{1}{3}$, two abrasions over the left knee and chin, lacerated injury in the left leg, deformity, contusions in the right thigh, laceration over the right thigh, loss of tooth, two abrasion over the forehead and multiple injuries all over the body. ORIF plate was implanted for the fracture. However, the Tribunal has awarded only Rs.1,20,000/- for the permanent disability and Rs.10,000/- for pain and sufferings. The claimant was hospitalized from 07.07.2009 to 10.08.2009. For medical expenses and extra nourishment, the Tribunal has awarded only Rs.3,000/- each. For loss of amenities and for pain and sufferings, the Tribunal has not awarded adequate compensation. The Tribunal erred in not granting compensation for loss of earning capacity.

4. Brief facts : When the claimant was standing on the road margin, she was hit by a two wheeler Hero Honda, which was driven rash and negligently by the first respondent. The case was registered against the first respondent in Thiruvannamalai East Police Station in Crime.No.852 of 2009. In the accident, she sustained multiple injuries, for which, she has spent around one lakh rupees for treatment and transportation. She was only an agricultural coolie and earning Rs.4,000/- per month. Due to the accident, he is unable to lift weight. Her income is also affected, due to the disability.

5. The Insurance Company has contested the claim, both on liability and quantum. Specifically, it was contended that the accident was not occurred in the manner as claimant has narrated and the injury sustained was simple in nature. Hence, the claim was excessive and baseless.

6. To prove the claim, the claimant has examined the doctor, who gave the disability certificate, as P.W.2. Seven exhibits were marked on the claimant's side.

7. The Tribunal has held that the accident was occurred due to the rash and negligent driving of the first respondent. The vehicle being insured under the second respondent Insurance Company, the compensation has to be paid by the Insurance Company. Regarding the quantum of compensation, the Tribunal has assessed the loss under various heads and awarded Rs.1,42,000/- as per the following Table:-

1	Loss of Income (Rs.3,000 x 1 month)	Rs.3,000/-
2	Permanent Disability (Rs.2000 x 60%)	Rs.1,20,000/-
3	Pain and Sufferings	Rs.10,000/-
4	Extra Nourishment	Rs.2,400/-
5	Transport Expenses	Rs.3,000/-
6	Medical Expenses	Rs.600/-
7	Attender Charges	Rs.3,000/-
	Total	Rs.1,42,000/-

8. The learned counsel appearing for the Insurance Company would submit that the claimant is an agricultural coolie aged about 50 years. Taking note of her age and claim, the Tribunal has fixed Rs.3,000/- as notional income to arrive at the loss of income for a period of one month, for which she was taking treatment. Accepting the opinion of the doctor, fixed the permanent disability as 60% and awarded Rs.2,000/- per percentage. The injuries sustained were partial and temporary in nature and therefore, the award passed by the Tribunal has to be confirmed.

9. The calculation memo circulated by the learned counsel for the appellant would indicate that the claimant is aggrieved by not providing any compensation for the loss of earning capacity incurred by the victim due to the accident and the disability caused. In addition, it is also stated that the claimant lost her income for more than six months due to her injury and treatment. Whereas, the Tribunal has awarded only Rs.3,000/-, taking into account that she lost her income only for one month. The discharge summary Ex.P4 clearly shows that she was in the hospital for taking treatment as In-patient from 07.07.2009 to 10.08.2009. Thereafter, for more than five months, she was under rest. Hence, for loss of income, the compensation awarded is inadequate.

10. The perusal of the disability certificate marked as Ex.P6 and spoken by P.W.2 indicates that the claimant suffers restriction of knee movement and limping while walking. She find difficult to squat. So, she has opined that the injury has caused her 60% permanent disability. The certificate does not indicate whether the percentage of injury is in respect of the part of the body or for the whole body. Therefore, the sum of Rs.1,20,000/- awarded under the head of permanent disability appears to be in excess and at the same time, the Tribunal has not taken note of loss of amenities and loss of earning capacity incurred by the claimant. Being an agricultural coolie, constrained to squat and walk, besides limping due to fracture in the leg, there will be an impairment of earning capacity to an extent of 10%. Therefore, the award of the Tribunal is modified as below:-

1	Loss of income (Rs.3000 x 3)	Rs.9000/-
2	Permanent disability (35% x 2000)	Rs.70,000/-
3	Pain and sufferings	Rs.15,000/-
4	Transport expenses	Rs.5,000/-
5	Medical expenses	Rs.600/-
6	Extra Nourishment	Rs.3000/-
7	Attender charges	Rs.5,000/-
8	Loss of amenities	Rs.10,000/-
9	Loss of earning capacity (3300 x 12 x 14 x 10%)	Rs.55,440/-
	Total	Rs.1,73,040/-

11. With the above modification, this civil miscellaneous appeal is allowed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Motor Accident Claims Tribunal,
Additional Sub Judge, Thiruvannamalai.

Copy To :

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

C.M.A.No.422 of 2015

RSV(CO)
RMP(27/04/2021)



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