

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2761 of 2013

M.Raja

... Appellant

Vs.

1. Chandrasekar

2. The Divisional Manager,
National Insurance Co. Limited,
No.19, Officer's Line,
Vellore.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 14.10.2011 made in M.A.C.T.O.P.No.311 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For R2 : N.B. Surekha

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 14.10.2011 made in M.A.C.T.O.P.No.311 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai.

2. The case of the appellant is that on 10.01.2007 at about 12.30 p.m., when the appellant was walking on the side of the road from North to South in Thandrapattu, Thiruvannamalai Town, near a petrol bunk, the first respondent driving his Hero Honda bike bearing Registration No.TN-25-H-3720 in a rash and negligent manner hit the appellant from backside. As a result, the appellant had sustained injuries and fractures on his head, left leg limb and right hand shoulder. Immediately he was admitted for treatment in Thiruvannamalai Government Hospital.

At the time of accident, he was aged 35, and before the accident, he was trading groceries and was earning Rs.5,000/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence he filed a petition before the Motor Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai, claiming Rs.5,00,000/- as compensation under various heads.

3. Denying the allegations, the second respondent who is the insurer of the first respondent's bike filed a counter affidavit before the Tribunal stating that the first respondent had no valid driving licence at the time of accident and the appellant has to strictly prove that the first respondent had possessed valid driving licence at the time of accident. Further, it has been stated that the policy details have not been furnished to them by the appellant, and unless it is furnished, they are not liable to pay any compensation to the appellant. Moreover, it has been stated that the alleged age, occupation and income of the appellant are not true and the amount of compensation claimed is highly excessive.

4. During the trial, on the side of the appellant, the appellant was examined as PW1, one Dr.K.Ravindran was examined as PW2 and Exs.P1 to P9 were marked. On the side of the second respondent, neither any witness was examined nor any document was marked.

5. The Motor Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant and awarded Rs.1,20,000/- as compensation as follows :

S.No.	Description	Amount
1.	Disability	70,000
2.	Transportation	5,000
3.	Extra Nourishment	5,000
4.	Loss of Income	15,000
5.	Pain and Sufferings	25,000
	Total	1,20,000

6. Aggrieved by the award, the appellant/claimant has filed this appeal before this Court seeking for enhancement of the same.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent, and perused the materials available on record.

8. On perusal of the award dated 14.10.2011 passed by the Motor Accident Claims Tribunal, Principal Sub Judge, Thiruvannamalai, it is observed that the appellant in order to prove the disability examined one doctor, namely, K.Ravindran, as PW2, and he has deposed that due to the injuries and fractures sustained in the accident, the movement in the appellant's left leg was restricted and he was not in a position to sit and walk as before. Thus he assessed 35% disability and given Ex.P8 Disability Certificate. The Tribunal only based on the deposition of the doctor has awarded Rs.70,000/- for Disability i.e. Rs.2,000/- per percentage of disability and Rs.25,000/- for Pain and Sufferings, and this Court is not inclined to interfere with the same.

9. It is also observed from the award of the Tribunal that the appellant has not placed any material to prove his income, and therefore the Tribunal has fixed his income as Rs.3,000/- as minimum wage. Since the appellant had sustained malunion fracture on his left leg knee, definitely he would have not gone for work for a period of five months. The Tribunal only considering the same has awarded Rs.15,000/- (3000 x 5) for Loss of Income. It is further observed that the appellant has not been awarded any compensation for Attender Charges and Loss of Amenities. During the period of treatment, the appellant would have spent some amount for attender and would have suffered from loss of amenities. Considering the same, this Court is inclined to award Rs.10,000/- for Attender Charges and Rs.5,000/- for Loss of Amenities. The sum awarded under the heads of Transport and Extra Nourishment is reasonably awarded by the Tribunal, and therefore this Court is not inclined to interfere with the same.

10. In view of the observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Disability	70,000	70,000	Confirmed
2.	Transportation	5,000	5,000	Confirmed
3.	Extra Nourishment	5,000	5,000	Confirmed
4.	Loss of Income	15,000	15,000	Confirmed
5.	Pain and Sufferings	25,000	25,000	Confirmed
6.	Attender Charges	-	10,000	Granted

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
7.	Loss of Amenities	-	5,000	Granted
	Total	1,20,000	1,35,000	Enhanced by 15,000

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the second respondent insurance company is directed to deposit the said amount of Rs.1,35,000/- 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 by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

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

+1 CC to M/s. N.B. Surekha, Advocate sr 18595.

+1 CC to M/s.M. Malar, Advocate sr 18107.

C.M.A.No.2761 of 2013

RLD(CO)
SP(18/12/2020)