

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.08.2020	Pronounced on:13.08.2020
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CORAM
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.946 of 2015

K.Sathish ...Appellant/Petitioner
/versus/

1.D.Krishnamoorthy

2.The Royal Sundaram Alliance Insurance Co.Ltd.,
Now, the 2nd respondent having office at No.1, Club House Road,
Subramaniyam Building, II-Floor,
Anna Salai, Chennai-2.

(1st respondent set ex-parte in the lower Court)
...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act
against the Decree and Judgment made M.C.O.P.No.10 of 2011 dated
30.11.2011 on the file of the Sub Court Judge, Thiruttani /
Motor Accident Claims Tribunal, Thiruttani.

For Appellant	: Mr.R.Ponnusamy
	For M/s.Anand & Suryas
For R2	: Ms.Harini
	For M.B.Gopalan
For R1	: Exparte

J U D G M E N T

(The case has been heard through video conference)

The accident victim who was awarded a sum of
Rs.1,80,350/- as compensation by the Tribunal, seeking
enhancement had preferred this appeal.

2. The appellant case is that, at the time of accident
was 27 years old. He was self-employed (electrician) earning Rs
400/- per day. On 08/11/2009 at about 5.00 pm while he was
riding his TVS XL two wheeler bearing registration No. AP 03 AJ
3623 and proceeding towards Nagalapuram village on the
Tiruvallur - Tirupathi Highways, near Pudur Village lorry
bearing registration No. TN AP-03-W-7795 proceeding towards
Tirupathi dashed against him and caused multiple injuries over
his body.

3. He was admitted in the hospital and treated for 49 days as in-patient. Open Reduction Internal Fixation (ORIF) at his femur region and Split Skin Grafting (SSG) was done at his right femur region. His right leg shortened by 1 1/2 inch. The doctor certified that he has sustained 65% Partial Permanent Disability (PPD).

4. A claim petition for Rs 5,00,000/- was considered by the Tribunal and award of Rs.1,80,350/- was passed in the light of the evidence placed by the claimant in his support and the counter filed by the Insurance Company.

5. The appellant is aggrieved by the notional fixation of his income as Rs.3000/- p.m., and loss of income during the period of treatment. According to the appellant, the Tribunal ought to have fixed the income at Rs.6,500/- p.m., and ought to have awarded 9 months income under the loss of income head instead of Rs.3000/- for 5 months.

6. Further, it is contented by the appellant that, compensation given under the conventional head are low and for each percentage of disability, the Tribunal ought to have awarded Rs.3,000/- instead of Rs.2,000/-.

7. The learned counsel for the Insurance Company/respondent refuted the above said contention of the appellant counsel. According to the Insurance Company, the claimant had not produced any document to prove his employment as electrician and his income. There is no proof to show that after his discharge from the hospital after 49 days, he was convulsing without any gainful employment. The injuries sustained by the claimant did not cause him any permanent disability. He only sustained temporary disability and for the said disability, assessment of 60% disability is very high. The Tribunal has awarded Rs.2,000 per percentage of disability as per the prevailing standard during the year 2009. At the same time, the learned counsel for the respondent would also fairly concede that, the Tribunal has not taken note of loss of amenities and attender's charge, which may be considered by this court and just compensation may be granted on this head.

8. Heard the counsels. Records perused.

9. Before the Tribunal, the claimant and the clinical doctor has been deposed as PW-1 and PW-2. Seven documents were relied by the claimant in support of his claim. The First Information Report reveals that the criminal case was registered against the driver of the lorry which hit the claimant two wheeler for the rash and negligent driving. The FIR and the ocular evidence of the victim were considered as proof of negligence on the part of the offending vehicle driver. The Discharge summary - Ex.P-2, X-ray - Ex.P-4 and the Disability

certificate - Ex.P-7 were considered for ascertaining the disability. PW-2 - Dr.Thiyagarajan had deposed that, on examination of the accident victim, his medical records and X-ray he has assessed 65% partial permanent disability. The certificate is marked as Ex.P-7. In the cross examination, PW-2 has admitted that there may be 5% variation in his assessment. The Tribunal has fixed the disability as 60%. The discharge summary which is marked as Ex.P-4 discloses that the Mr. Satish Kumar (claimant) was admitted in the SVRR Govt. General Hosptial, Tirupathi on 08/11/2009. Diagnosis - Type III B compound fracture at Femur Middle 1/3rd long oblique right side. He was discharged on 26/12/2009 after conducting two operations. One for femur fracture and other for skin grafting. There is no indication from the discharge summary, that the patient required any follow up medicine or treatment. Further, 60% disability of mobility in one lower limb cannot be equated to 60% partial permanent disability. Though the disability percentage is fixed on the higher side, the same is left undisturbed.

10. The claimant had not produced any document to proof his avocation or income. In the cross examination he admits that he have no document to prove his age and income. However in the FIR itself, the claimant has stated that he is an electrician by profession. During the year 2009, the notional income fixed by the Courts in the case of self employed person who could not prove his income was from R.3,000/- to Rs.4,500/- p.m., depending upon the evidence to prove the capacity to earn. In this case, the Tribunal has fixed the minimum notional income of Rs.3,000/- to fix the loss of income for a period of 5 months.

11. The learned counsel for the appellant would submit that the claimant after the accident was not able to move out and as was out of job for 9 months. Therefore the loss of income should be computed for 9 months instead of 5 months. This court finds that the submission of the learned counsel in this regard is acceptable. For the accident happened on 08/11/2009, the claim petition was filed only in the month of December 2010, i.e., a year and a month after the accident. Therefore this court holds that the appellant is entitle for enhanced compensation in this head (Rs.4,500 x 9 months = Rs.40,500/-).

12. It is brought to the notice of this Court that the Tribunal has not awarded compensation for loss of amenities. In view of the fact, that the right leg of the claimant has shortened by 1½ inches, for the loss of amenities he is entitle for a sum of Rs.30,000/- and also entitle for attender's charge at the rate of Rs.1,500/- for 9 months. Under the heads Transport to hospital and extra nourishment, the Tribunal has awarded Rs.5,000/- each. The compensation under this head is enhanced to Rs.10,000/- each.

13. Accordingly, the total compensation payable to the appellant /claimant shall be as below:-

Loss of Income (Rs.4,500 x 9 months)	Rs. 40,500/-
Disability (60 % x Rs.2,000)	Rs.1,20,000/-
Pain and Sufferings	Rs. 30,000/-
Transport to Hospital	Rs. 10,000/-
Extra Nourishment	Rs. 10,000/-
Loss of amenities	Rs. 30,000/-
Medical expenses	Rs. 5,350/-
Attender's charges (Rs.1,500 x 9 months)	Rs. 13,500/-
Total	Rs.2,59,350/-

14. In the result, the award is enhanced from Rs.1,80,350/- to Rs.2,59,350/- with interest at the rate of 7.5% from the date of claim till the date of payment. The respondents 1 & 2 are directed to deposit the said enhanced compensation amount jointly and severally to the credit of M.C.O.P within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant is entitled to withdraw the same by filing appropriate petition before the Tribunal. Accordingly, the Civil Miscellaneous Appeal is partly allowed with costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rpl/jbm

To

1.The Motor Accident Claims Tribunal (Sub Court Judge),
Thiruttani.

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

+1 CC to M/s. Anand & Suryas, Advocate sr 26639.

C.M.A.No.946 of 2015

RSV(CO)

SP(08/02/2021)